VOLUME III.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 17, Original.

THE STATE OF NORTH DAKOTA, COMPLAINANT,

vs.

THE STATE OF MINNESOTA.

IN EQUITY.

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VOLUME III.

STATE OF NORTH DAKOTA

vs.

STATE OF MINNESOTA.

1807 October 10, 1917.

Hearing resumed at 2 p. m. pursuant to adjournment, with all parties present.

Direct examination of Thomas E. Dunn, continued by Mr. Palmer:

Q. What was the state of the highways in this particular part of Traverse county that I have heretofore described during the years that you knew it up to 1896?

A Well, we was driving on the prairie then. That was anywhere across lots. They wasn't graded up much then.

Q. Did you have any difficulty in getting around in that territory?

A. No, sir.

Q. From 1896 do you recollect any particularly wet years, Mr. Dunn?

A. Yes, we had a real wet year in 1897. There was a lot of rain that year.

Q. What part of that year was wet particularly?

A. We had a good deal of rain in June, and along in harvest time it rained heavy and was pretty wet.

Q. And when was the next year that you recollect of it being wet?

A. Well, we didn't have so much wet years after that for some time. We had some rains, but not so heavy.

Q. Do you recall the year 1899?

A. Well, there was quite a lot of rain that year, but not so much as that big rain in 1897.

Q. What time of the season of 1899 was the wet season?

A. Well, along after we got through seeding it started in to rain and then it kept up a while and then it dried off and we got some more in the fall again.

Q. How was it in harvest time?

A. Well it was part of the grain cut before that and it
1808 rained on that and it kept them back a while from getting it cut.

Q. 1900, do you recollect about that?

A. I don't just remember about 1900. I was there through it, but don't just remember.

Q. Do you recall particularly at harvest time in 1900?

A. There was one of the harvest times they had quite a lot of rain and we couldn't do anything with cutting on the low land, until they got some of those little engines and put on their harvesters and tried to cut that way.

Q. What year was that, as near as you can recollect?

A. Well, it was somewhere about 1900, but I ain't sure whether it was 1900 or 1901.

—. ——.

A. It was along about there. That was one year we have had it bad in harvest like that and I can't place it exactly, but I know about them getting those little machines and trying to cut. And then there was two or three fields on the low land here and there which was left that they couldn't cut.

Q. From 1900 on what is the next year that you recall?

A. From that on we didn't have no more until we got it in 1914.

Q. What were the conditions in 1914?

A. Well, 1914 after the crops was in it started to rain and kept raining until it got pretty wet.

Q. What month particularly?

A. It started in June, but they got the crop off pretty well, but it left their land wet.

Q. How would 1914 compare with ordinary seasons?

A. It was called a pretty wet season. Good deal of water.

1809 Q. 1915, Mr. Dunn, do you recall as to that?

A. Well, that was still worse. In 1915 we got more rain than in 1914.

Q. Were lands still wet in the spring of 1915?

A. Yes, it kept them back from getting crops in on a good many of the low lands and they had to wait quite a while before they could get on to it.

Q. What was the condition right through the season of 1915?

A. It started to rain and kept on raining until along through harvest. We had considerable rain in harvest.

Q. When did it start to rain after the spring break-up?

A. Well, it started along the last of April and June, and it rained all through June and then we had a good deal of rain in July. Then in the fall it began to dry up and they got considerable plowing done in some parts of the country.

Q. How were the lands when it froze up in 1915?

A. It was pretty wet. It froze up wet.

Q. What would you say as to the crop of 1915 in that section?

A. Well, the crop of 1915 got rust on it, and cut it down pretty bad from the wet and the rust. We only got No. 3 and 4 grade.

Q. Could you make an estimate as to about what part of an average crop they got through that section of the country that year?

A. They got about five and ten and so on of wheat and twenty-five of oats.

Q. What part of an average crop?

A. They got about half of an average crop.

Q. Now in 1916?

A. Well, 1916, we got more rain in the spring and along
1810 in July and June it rained all the time. The heaviest rain that I ever saw since I came there. It got the land where no water would lay on it. It was soaked up so you couldn't step on it or walk across it.

Q. You are speaking of conditions generally through that section of the country?

A. Yes, where it rained so much. There wouldn't be any water on the ground, but still if you stepped on it you would sink right down. The lower parts had water, but one was as bad as the other because you couldn't step on either one.

Q. What about a crop?

A. Well, it dried off so they got a fair crop. Not a very big crop, but there was more rust with it and spoiled it again.

Q. Now in 1916 what part of a crop did they get through that section of the country?

A. That is the one.

Q. What part of a crop?

A. A third or so. It was wet and it rusted.

Q. Now take these lands out in Clifton, east of Twelve Mile creek, and in Redpath east of Twelve Mile creek and south of the Tintah slough region, and over in Logan and Gorton townships in Grant county just east of the Traverse county line. Did you see those lands in 1915 and 1916?

A. I did.

Q. What was the condition as to water?

A. Water over part of it, and it was wet. After harvest I drove through there. I saw some places with shocks, or a lot of weeds they had cut, but they didn't get any crop all through there generally. It was too wet in 1916 to get any crop only hay.

Q. Did you ever see that condition existing there before
1811 in all the time since you have known that country?

A. I didn't. That is the worst year I ever saw it.

Q. Did the ditches and state ditch up through that territory appear to help any?

Mr. Bronson: Objected to as asking for a conclusion of the witness, mere opinion, no foundation laid.

A. There was water run in them of course, but there was water over the land just the same.

Q. You recall the circumstances of the first part of the Mustinka state ditch being put in somewhere along in the year 1894 to 1896?

A. Yes, I was up in there. I was up with the surveyors and the fellow that was digging it, driving them up there.

Q. Did you observe any different conditions up there after that ditch was put in?

A. Well, I didn't see much difference to it as far as draining it out much, only in the spring of the year it is full in that ditch and took some of the water that way.

Q. As to these Redpath sloughs, did this ditch have any effect on those?

A. Well, the Redpath sloughs of course—it helped to drain them out a little in the spring of the year. When the snow was deep and after it got melted out it would take that down a little, and still there was water laid there after that even. It didn't take it all off.

Q. How would it compare to the way it was before?

A. It would be water all around over there.

Q. How would it compare to the way it was before?

A. Just about the same.

You wouldn't see any difference to it in driving over it. You see all this water ran off just as fast without the ditch as with it because these little ravines took it off to the river just about as fast in
1812 the early days before there was any plowing done or anything. The water had a regular course to get to the northwest and head for the river.

Q. I want to ask you about the conditions in west, north and northeast of Wheaton from the Swede church, as it is called, in the town of Monson, down to the railroad bridge or somewhat below the railroad bridge. You are well acquainted with that territory?

A. Yes, sir.

Q. And have observed it from year to year?

A. I have been over it year after year.

Q. Now what could you say, Mr. Dunn, as to flooding from the river of the lands through that particular section?

A. Well, our river bed in the early days was deeper, and after these farmers got to breaking their land up those ravines, the little feeders to the river would run the water in here. It filled the bottom of the bed up pretty well until it got all level with some of that land. You could hardly tell the difference.

Q. Where was that?

A. Right on the Mustinka river right up through the flat there, up toward the church.

Q. What direction from the church?

A. Well, that was from the church down toward Wheaton.

Q. And when it rained in the spring and snow melting this water would overflow the lands?

A. It would flow along over some of this lower land for a few days and then those farmers thought if that river was cleaned out it would stop all that.

Mr. Bronson: Object to the witness stating what somebody thought and move to strike it out as hearsay.

Q. Well, now you say there seemed to be an impression if
1813 that river was cleaned out it would help them. Was that done?

Mr. Bronson: Objected to as calling for hearsay evidence, mere opinion evidence, simply encumbering the record, improper testimony.

A. Yes.

Q. And that was this second part or last part of the Mustinka ditch which has been testified to here?

A. Yes, sir.

Q. Now, Mr. Dunn, did you observe the conditions along that low land from the Swede church down to below the Milwaukee railroad bridge after that ditch was put in?

A. Yes, sir.

Q. Now I wish you would compare the conditions there after the ditch was put in with what it was before.

A. Well, it hasn't overflooded in that upper and since it has been cleaned out.

Q. In the upper end?

A. Only in the spring when the snow melted a year ago.

Q. In 1916?

A. Yes sir.

Q. Now did you see the water there in 1916?

A. I did.

Q. How did the quantity compare with what used to be there?

A. Well, that was about as high, pretty close to as high as it was in 1897. There wasn't much difference in it.

Q. How as to the length of time it stayed on?

A. It stayed over a week.

Q. Well, how long did it stay on as compared with the way it used to before?

A. Just about the same.

1814 Q. Did you see any flooded condition there in 1915 in the summer?

A. No, it didn't get up so high.

Q. Are you acquainted with these lands that have been marked here shaded in yellow on the map, Complainant's Exhibit 1, being from about three miles south of White Rock on up the Bois des Sioux river to the Rabbit river?

A. Yes sir, I have driven it quite often.

Q. About what time is your earliest acquaintance with this land?

A. Well, I started to drive in 1886 sometime. I had been up a half dozen times before—not very many because I was farming down below, but from the time I started in the livery business I was driving two or three times a week.

Q. Where?

A. To Fairmount and sometimes clear to Breckenridge.

Q. From what point did you drive to Fairmount?

A. I drove from Wheaton to White Rock and across at White Rock on to the west side when it was too wet.

Q. Crossed over to White Rock on the west side of the valley?

A. Go over on the Dakota side then going up.

Q. When it was too wet?

A. Yes sir.

Q. When it was not too wet where did you go?

A. When it was so we could go up through the prairie we would take a cut up through that flat. We had a kind of angling road up through there. There was a flat of prairie grass and seeds and cat-

tails, and all such stuff all along up through there until after we got above Blackmer.

Q. Well, you mean up this Bois des Sioux valley from north of White Rock?

1815 A. Yes, we drove up through it and came out on a road that ran from Blackmer up to Fairmount. They had a pretty fair road then, but we used to angle that prairie swamp.

Q. Now, as I understand it, the road from Blackmer straight on to Fairmount was in pretty fair shape?

A. Yes sir.

Q. But from White Rock up to Blackmer how was it?

A. Well that is nothing but swamp, pieces of prairie land there. We called it the slough. When it was dry enough we would wade through it. Sometimes we would wade through water and keep driving on because it was nearer.

Q. On the east side where did that begin?

A. Not on the Minnesota side. You see this was on the west side of the Bois des Sioux river all up through there. We was on the west side of it.

Q. Then from the Bois des Sioux river westerly how far did this flat of prairie swamp, as you call it, extend—how far west?

A. There is part of it extends a mile and a half wide, and then it tapers down until about a mile. I think right at White Rock it is about two miles wide before you get over it. And it tapers down narrower as you go up.

Q. Something of a bottle shape?

A. Yes. Take it at Blackmer it is not so wide and it gets still narrower farther up.

Q. Now when you first knew that country in 1886 and 1887 and 1888?

A. I drove all the time there then.

Q. And have you known it well ever since?

A. I have, yes.

Q. And driven over it a great many times?

1816 A. Yes, sir. I have been over there every once in a while. Of course the last years we have been driving automobiles and I kept to the traveled road, but before with the team I drove up through the flats.

Q. Now from your first acquaintance there in 1886 on, we still say for four or five years, what shape was that territory in on up say from White Rock to Blackmer?

A. It was always wet, and there was cat-tails and stuff. I stopped and got some cattails and took home to show my wife how they looked, what was growing up above White Rock.

Q. Were there any farms in there?

A. After it dried up somewhat there was two or three farmers started and broke up some of it, but afterwards they had to quit it. It wouldn't raise grain for them. Something about the slough that growed up to weeds, these yellow flowers as we called them. It looked more like yellow weeds than any grain they could raise on it. They tried it.

Q. Now what year did they begin to break this land up?
A. Well, that was in, I had driven it then five or six years before they began to settle in there.
Q. About 1891?
A. Yes, about that. Some of them built shanties and broke up some of it, and we had a few dry years and they broke a little more of it.
Q. What were those dry years?
A. From '91 down for three or four years it was dry.
Q. Was that quite a dry period through all that section of the country?
A. It was a dry period all over that flat country, all through our country.
Q. How long did they continue to cultivate and farm this land?
1817 A. Oh, they tried to cultivate it I think about six years or so.
Q. Then what happened?
A. It began to get a lot of water on it. It didn't take much rain to stop them there, and they kind of let it go back and got out of there.
Q. What year was the worst in respect to wet conditions and flooding there?
A. Well, in 1897 and 1898 it rained and got it wet. We didn't have big floods or anything, but we had so much rain that it wet the land so they couldn't do anything with it.
Q. What was the year of the worst flood they had there?
A. I can't name the years, but I know about the time they couldn't stand to farm it. We had two or three dry years and then it came on wetter again, and that is about ten years ago when we had some more rain there.
Q. You don't mean ten years?
A. Yes sir. And then it came down to 1914, 1915 and 1916, and that drove them clear out entirely. That has all been flooded since until this last summer it has dried off again, and it is still grown up with weeds and stuff clear up to Blackmer now.
Q. Is it any different now from what you knew it in the early days?
A. It didn't look much different now than the first time I drove through it. It is all weeds again. It has more weeds than grass by being broke up some of it.
Q. You say in 1891, 1892, 1893 and 1894 they had crops?
A. They had a little.
Q. What is the first year you remember of their having a flood there, or extremely wet conditions?
A. The great trouble with me I don't remember the years.
1818 Q. Mr. Dunn, you have spoken about the year 1897 being a wet year over in Traverse county?
A. Yes, it rained a good deal.
Q. How was it in 1897 over in that territory?
A. It was wet there of course.

Q. How wet?

A. Well, it had water laying all over that flat with the rain.

Q. You saw it?

A. I drove through it partly, but it wasn't so awful flooded. It was wet and full of water, but not but what I could drive the team through it.

Q. How long did it stay on there?

A. Two or three months there.

Q. Now did you see it in 1915 over there on those flats?

A. Yes.

Q. From White Rock on up to Blackmer?

A. Yes.

Q. How was it then?

A. There was a stream of water. I came down from Blackmer, halfway down that road and ran right into the water and stopped my car and got up and looked and there was water as far as I could see, and I had to back up and go around by the west road.

Q. How was it in 1915 as compared with what you saw in 1897?

A. It was just about the same. It was all water. I could have drove horses through it, but I couldn't drive the car through the way it stood.

Q. How long did the water stay on there in 1915 as compared with 1897?

A. There wasn't much difference. It stayed flooded over
1819 there for two or three months before it went down. It didn't get so awful deep, but it flowed all over it.

Q. Now there has been something said here about a meridian road, Mr. Dunn. Do you recollect when that was put in there?

A. They laid that on the line about six years ago, I think it was.

Q. What line was that on?

A. It was about a mile west of White Rock that runs up through there on them section lines.

Q. Straight north?

A. Yes sir.

Q. To a point east of Blackmer?

A. Yes sir.

Q. And then westerly into Blackmer?

A. Yes sir.

Q. And north from Blackmer on the same road you used to follow?

A. Yes sir, north to Fairmount. It is the same road I used to go up and down on.

Q. Now what year did they put that meridian road in?

A. 1910, I think it was. The section line was still there but it wasn't traveled or nothing and they plowed and graded a little that year and marked it out.

Q. Did you ever travel that meridian road?

A. Once I drove through it.

Q. When was that?

A. That was in 1913, I think. I thought I would go down to see *out* it was.

Q. How was it?

A. It was pretty rough and I never went back on it any more.

1820 Q. Was it a road that was used to any extent at all?

A. A few wagons had been down through it, but the cars couldn't run on it.

Q. Was it ever in general use?

A. They went around. They wouldn't follow it, in fact they couldn't. If it came any rain at all you couldn't go up through it. A shower of rain would -et it.

Q. Now as I understand it, you have described the territory from White Rock on north to Blackmer and east of Blackmer?

A. Yes.

Q. Now how was it from Blackmer on north to Fairmount, from the days you first knew it, I mean?

A. Well, they was farming on that land up from Blackmer on both sides of the road down to the strip of prairie that was used to cut hay on down along the river. Of course I didn't drive down along the river bank, but I could see the stacks of hay and could see them cutting hay on it and saw them farming on the land. It seemed to be about a mile down to the river there, and they farmed along the road there over half a mile wide, some of it three-quarters of a mile and the rest would be hay land.

Q. Down to the river?

A. Yes.

Q. Did you own some land in Traverse county?

A. I did.

Q. How much?

A. I had a quarter there.

Q. When?

A. I had that for ten years I guess.

Q. And have you owned some land there since?

A. I sold out the land there then.

Q. Have you bought some since?

1821 A. I bought some in North Dakota.

Q. Have you been in the business of taking out real estate men?

A. Yes sir.

Q. And men looking at farms with a view to buying them?

A. Yes.

Q. Or making loans on them?

A. Yes sir.

Q. So that you know and have known since you have been there in general farm values in that section of the country?

A. Yes.

Q. Now say from 1886 on when your acquaintance began with these lands in this flat down from White Rock to Blackmer what would you say was the fair market value of these lands in there?

A. Those flat lands I would say about $5.00 an acre.

Q. What are they worth now?

A. Not worth any more on that flat above White Rock than before.

Q. Have they ever been worth any more?
A. Never, and I don't think they ever will be.
Q. Now did you go with the witness Gunderson over this territory up the Bois des Sioux valley the 17th of September last?
A. I did.
Q. What conditions did you find there?
A. We found some very good, but from White Rock to Blackmer there is nothing to it, only weeds and little hay stacks here and there on it, some of it.
Q. I wish you would compare its condition now with what it was when you first knew it?
A. Well, when I first knew it it had more grass on it than
1822 it has now. I would like it better then than now because it is nothing but weeds and cat-tails now.
Q. Were there cat-tails there when you first knew it?
A. Yes, there were always cat-tails if there was any water left on it at all for a little while. I used to cut them off and take them in the buggy home with me.
Q. Now there was something said here about the number of hay stacks up through that territory up as far as above Fairmount.
A. Well, take above Blackmer it kept getting less stacks. There was one quarter down around out from Blackmer, between Blackmer and White Rock that had a good many stacks over in toward the river there, but that up there wasn't so many stacks of hay because it was more farms.
Q. Do you recollect how many stacks you found there altogether?
A. I counted them all and they were set down. I counted every quarter as we went, but as far as writing down he done that. I counted them all. There is not a stack there that I didn't count.
Q. And he has given it here as you gave them to him?
A. Yes, sir, he has given them just as we took them off there. The only thing he got mixed up on these fox-tails and cat-tails. He forgot the fox-tails and cat-tails.

Cross-examination.

By Mr. Bronson:

Q. You saw plenty of cat-tails in this territory?
A. Oh, yes, I knew cat-tails.
Q. You saw them right along as you drove up from White Rock towards Fairmount?
A. Up to Blackmer, as far as Blackmer.
1823 Q. See any above Blackmer?
A. Yes, on the river, you see we drove to the river.
Q. You drove up towards Fairmount too?
A. Yes.
Q. See some up towards Fairmount from Blackmer?
A. Only on the banks of the Bois des Sioux.
Q. And on some of the farm lands that border on the Bois des Sioux?
A. No, not on the farm land.

Q. Blackmer, I understand is near the northeast corner of 20?
A. Yes.
Q. Township 129, Range 47?
A. Yes.
Q. Do I understand you saw no cat-tails on Section 15 or 17 north of there?
A. That is north of Blackmer?
Q. Yes, sir.
A. Only down at the river I said.
Q. Well section 17 is a mile west of the river?
A. Yes, sir, there is some weeds and stuff on it, yes.
Q. But no cat-tails?
A. No.
Q. None?
A. No.
Q. No cat-tails on Section 18? That is likewise north and a mile west of the river?
A. There is weeds and grass.
Q. No cat-tails?
A. No, only down by the river.
Q. Any cat-tails on Section 20 which is directly west of
1824 Blackmer elevator and is a mile west of the river?
A. Yes, down west of Blackmer there is a low place with some on.
Q. Any cat-tails on the west half of section 33 which is two miles south of Fairmount, and a half a mile east?
A. Only down at the river bank along there I saw some.
Q. Now in your description of this territory along the Bois des Sioux in North Dakota you have apparently described the territory running from White Rock north up to Blackmer?
A. Yes, sir.
Q. And at Blackmer they have an elevator?
A. Yes, two of them.
Q. And this territory generally speaking west of the river which you call a swamp is how wide in extent?
A. About two miles wide at White Rock and tapers off from the time the slough comes in up at Blackmer.
Q. And I understand your testimony to be that this territory about two miles wide up to Blackmer is a low flat swamp?
A. Yes, it is low land.
Q. And worth about $5.00 an acre in the former days?
A. Yes.
Q. And worth no more than that now?
A. No sir.
Q. Worth no more than that in 1913, 1914 or 1912?
A. No sir.
Q. Raise any crops on it in 1913?
A. No, not much.
Q. 1914?
A. Very little crops has been raised on it.
Q. Were there any settlers, any farmers there in 1914?

A. I don't think there has been any living there at all.
1825 There is houses there but they can't stay in them.
Q. And you would say that generally speaking up to 1915?
A. 1915 they couldn't farm it.
Q. You say you were there in 1915 and saw the flood on it?
A. Yes, sir.
Q. What time were you there?
A. I was there two or three times.
Q. Well, when you were there when you saw the flood the highest?
A. I was there when the flood was highest.
Q. When?
A. That was about in July.
Q. 1915?
A. Yes sir.
Q. Had you ever in your experience before in that territory seen a flood there in the month of July?
A. Yes.
Q. As high as that?
A. I have seen it in the early times when it flooded some there in July.
Q. As high as that?
A. Yes sir.
Q. What year?
A. That was in 1897.
Q. In the month of July, 1897?
A. Yes sir, it takes it about a month to get up there after it gets into Lake Traverse.
Q. Now if I understand your testimony, in the month of July, 1897, you saw a flood there just as high as in the month of July, 1915?
A. Yes, sir.
1826 Q. And were you there in the year 1916?
A. I drove up there, yes.
Q. Did you see the flood there in 1916?
A. I saw it, yes.
Q. And when did you see it highest in 1916?
A. Well, I see it along in June then of the last of June.
Q. And was it as high in 1916 as it was in 1915?
A. No, not quite.
Q. Not as high?
A. I think there was somewheres about four inches difference in it.
Q. A little lower than it was in 1915?
A. Yes sir.
Q. Now I ask you if ever before in your experience with this territory you had ever seen it so high in the month of June before?
A. Well, take it in the spring it is always high.
Q. That is not my question. My question is whether or not you had ever seen it as high in the month of June of any previous year? As you did in the month of June 1916?
A. No, I think not, because it rained so in June it raised it.

Q. So the highest flood you ever saw in this territory in the month of June, was in the month of June, 1916?
A. 1916.
Q. Now you say you saw a flood there in 1897?
A. Yes sir.
Q. And when did you see that flood first?
A. Well, I saw it several times. I couldn't say just when. I was driving there off and on.
Q. From the early spring?
1827 A. Yes.
Q. Up through July?
A. Until all summer or fall.
Q. And they didn't raise any crops there that year?
A. Couldn't.
Q. Didn't put them in?
A. No.
Q. And did they raise any crops from Blackmer up along the river to Fairmount in 1897?
A. Yes sir, along the roadside there, but not down toward the river.
Q. Well, how close to the river were they unable to raise any crops up towards Fairmount from Blackmer in the year 1897?
A. They didn't have it broke up down close to the river.
Q. How close to the river?
A. They had it broke up about half a mile along the road there and kept breaking toward the river every year afterwards.
Q. Well, in 1897, the land along the Bois des Sioux river from Blackmer to Fairmount, as I understand you to testify was not broken up within a half a mile of the river?
A. No, it wasn't broke up in along there. It was prairie.
Q. And the land westerly from the river from a half a mile on was broke up?
A. Yes sir.
Q. And did they raise crops on that land in 1897?
A. They did.
Q. Was that land flooded in 1897?
1828 A. There was a part of it flooded down at the end north of Blackmer.
Q. How far above Blackmer?
A. Oh, it flooded about a mile of it, made it wet and soft so they couldn't do nothing with it.
Q. But from a mile north of Blackmer to north of Fairmount was that land flooded in 1897?
A. No sir.
Q. There is testimony in this case that that land in 1915 in July was flooded and was likewise flooded in the year 1916. Did you see it. Did you see that flood?
A. I did.
Q. So that so far as that land was concerned the floods in the year 1915 and 1916 were higher and greater than they were on that land in 1897?

A. Not any deeper, no sir.

Q. Then your testimony would be that in 1897 this land also from a mile north of Blackmer up towards the Rabbit river past Fairmount was flooded?

A. There was part of it flooded in that year the same as it was these last two years.

Q. That was what I was trying to arrive at. Those lands likewise north of Blackmere were flooded in the year 1897 the same as they were in the year 1915 and 1916?

A. Well, as much of the lands as were flooded but the land is high up there and don't flood over.

Q. You have driven over this land on September 17, 1917?

A. Yes sir.

Q. With Mr. Houston?

A. Yes sir.

Q. And Mr. Gunderson?

A. Yes sir.

1829 Q. And counted the haystacks?

A. Yes sir.

Q. And counted the acres of corn and wheat and barley growing on it?

A. Yes sir.

Q. And made notations on it?

A. Yes sir.

Q. This land we are talking about?

A. Yes sir.

Q. This land you have traveled for years and years?

A. Yes.

Q. And this land I am talking to you about the flood conditions on?

A. Yes sir.

Q. So we understand ourselves about that land?

A. Yes.

Q. Now I want to know if in the year 1897 all of this land that you observed on September 17th, and concerning which Mr. Gunderson here testified from memorandum, was overflowed?

A. Yes, it was overflowed in 1897.

Q. And I want also to ask you again if the flood of 1897 was as high over this land as it was in 1915 and 1916?

A. I say it was.

Q. And that on this very land which you observed on September 17, 1917, the flood stayed as long as it did in 1915 and 1916?

A. Yes, sir.

Q. And the land was rendered unfit for cultivation the same as it was in 1915 and 1916?

A. Where the flood was on it.

Q. So you are willing to let your testimony stand that in the year 1897 they had just as serious a flood and the flood ex-

1830 isted just as long as in 1915 and 1916?

A. Yes sir.

Q. Now you say this land up towards Blackmere was worth in the early days $5 an acre and worth now $5 an acre?

A. Yes sir.

Q. What is the value of the land in the early days from Blackmer up towards Fairmount in this territory you observed on September 17th, 1917?

A. Worth from $10 to $15 and $20.

Q. In the early days?

A. Yes sir.

Q. And what was the value of that land in the year 1913?

A. Up by Fairmount.

Q. From Blackmer north?

—. ——.

A. This land you observed in your automobile with Mr. Gunderson—what was it worth in 1913?

A. I presume it is worth $50 now up there.

Q. In 1913?

A. Yes sir.

Q. And what is it worth now?

A. I saw it is worth about $50.

Q. What was it worth in 1916 when it was flooded?

A. It wasn't flooded. I am not talking about the land that was flooded. I am talking about the lands up by Fairmount.

Q. Did I understand you to testify that this land which you observed with Mr. Gunderson on September 17th, 1917, north of Blackmer up towards Fairmount was not flooded in the year 1916?

A. Only about a mile or mile and half of it, and from that up it wasn't. About a mile above Blackmer I mean is the only land that floods. Afterwards you get up above where it don't 1831 flood.

Q. Do I understand you to testify that the west half of Section 22 east of Fairmount in the year 1916 was not flooded?

A. It might along the river east, but the land from Fairmount down there is all dry, from Fairmount up north.

Q. Mr. Dunn, when you went up with Mr. Gunderson you were supposed to look at the land- to find out their condition, that which had been flooded, weren't you?

A. No sir.

Q. What did you go up there for?

A. Went up just to see the country and to see if it had been flooded or if it was in crop or how it was. We found it mostly plowed up there above Fairmount.

Q. Looking at this map Complainant's Exhibit 1. Now you see this territory in west of the Bois des Sioux river in North Dakota shaded yellow?

A. Yes, sir, I see it is yellow.

Q. And this territory is the territory you drove over with Mr. Gunderson and made observations about the state of its condition, is that not correct?

A. Yes sir.

Q. Now there is not any question but what this yellow shaded territory was flooded in the year 1916, is there?

A. Never was flooded no year, the whole of that; only a small portion of that yellow was ever flooded.

Q. Now I want you to designate on this map any portion of this yellow shaded territory which was not flooded in the year 1916?

A. Well, sir, there was an awful lot of it.

Q. Just designate one piece in that yellow territory which was not flooded in 1916?

A. There was only a little above Blackmer was flooded
1832 because I drove my car down to it and turned around and came back.

Q. Look at the map and name one section or portion of section in the year 1916 that was not flooded in that yellow shaded territory?

A. Well where is Blackmer?

Q. Blackmere is about the northwest quarter of 21, Township 129, Range 47?

A. This water comes over in here, just about so much of it.

Q. Blackmer is in the northwest corner of Section 21?

A. Yes sir, but I want the section above. It flooded above that.

Q. The section above that was flooded?

A. Par-ly.

Q. And was the section above that flooded?

A. No sir.

Q. And was the section above that flooded?

A. No sir.

Q. And that would be Section 4?

A. Yes sir.

Q. And the section above Blackmere which you say was partly flooded would be 16?

A. Yes sir.

Q. And section 9 you say would not be flooded?

A. No.

Q. And Sections 4-129-47 you say that would not be flooded?

A. No.

Q. Section 33?

A. That was not flooded either.

Q. And Section 28 and part of 27 would not be flooded?

A. No, only a little water along the bank of the river
1833 got out on that.

Q. Now Section 22 which is just east of Fairmount, that would not be flooded?

A. Not all of it. The bridge came up over a part and I drove over the bridge there.

Q. Just a little flooded there?

A. Just a little line where it was out on the land.

Q. So you would say that this yellow shaded portion in North Dakota above Section 16 north of Blackmer was not flooded in the year 1916?

A. No.

Q. And it would not be flooded in 1915 either?

A. No. Only along a little of the bank or lowland of the river. It would get out a little on that.

Q. Now this land that is a mile east of Fairmount, a mile and

two miles south of Fairmount, within a mile of the river, is that good land or poor land?

A. That is good land.

Q. And if it wasn't overflowed it would be worth how much an acre?

A. It doesn't overflow.

Q. What is it worth per acre?

A. You couldn't buy it for less than $50 today.

Q. Have you bought any land up there?

A. I own some land in North Dakota.

Q. I mean in this territory?

A. No, I don't own any of that. I didn't have money enough to buy land up in there. They asked too much for it.

Q. Now you said you had a farm somewhere down in Traverse county?

A. I did.

Q. Where was that?

1834 A. Down in Croke township, three miles below Wheaton.

Q. That is the one you described first in your direct testimony, the northwest quarter of 4?

A. Yes, sir, 126-46.

Q. And you owned that how many years?

A. I took it in 1879, and I kept it until about twenty years ago.

Q. And you haven't owned any land since?

A. I have land in North Dakota.

Q. That and the land in Section 4?

A. Yes, sir.

Q. Raise crops every year?

A. Yes sir.

Q. 1915?

A. Yes sir.

Q. 1916?

A. Yes sir.

Q. 1914?

A. Yes sir.

Q. That land is high, very high?

A. Yes sir. That is worth a hundred dollars an acre.

Q. It lies high?

A. No sir, it is flat low land. I wouldn't have rolling land. When I came up here I had been on the hills of Wisconsin so I says, "Here goes for flat."

Q. That land all the years you have known it raised crops at every year?

A. Yes sir.

Q. Any flood standing on that land?

A. No.

Q. Now you are speaking about this territory between

1835 the Swede church and the Milwaukee railroad?

A. Yes.

Q. And about some floods that have existed along there. Now in

1897 do you remember about flood conditions along there?

A. The river was very high and extended out over some of the land.

Q. And you saw it in 1915?

A. Yes sir.

Q. And 1916?

A. I did.

Q. Do you know Thomas Heggen?

A. I do.

Q. Would you say that Mr. Heggen's farm was flooded in 1897 higher than it was in 1916?

A. I would say it was just as high in 1897, if not higher. There wasn't much difference in it.

Q. If Mr. Heggen said that the flood of 1897 was about a foot and a half higher along by his place or in there than it was in 1916, would you think that would be correct?

A. I think he was mistaken because the river was cleaned out. The river bed is cleaned out and it holds more water now. It would be higher on his land but that wouldn't make the water any more. It would be up over his land more.

Q. Do you know Mr. Teske?

A. Yes sir.

Q. Were you up around in that country in 1910?

A. Yes sir.

Q. Did you see the water go over at flood time in the Rabbit river in 1910?

A. It banked up with the ice in the spring.

1836 Q. And you saw floods up there in the spring of 1910?

A. Yes, I drove up there to his place. Took his girl up.

Q. And was flood waters going over into the Rabbit river?

A. I saw the flood.

Q. Some going over towards the Rabbit river or the Tintah slough?

A. I don't know as it went that far. It flooded over. It flowed around on that low land because it was jammed up with ice and snow.

Q. Was it flooded in the spring of 1910 at Mr. Teske's place?

A. Yes sir, because the water couldn't get away.

Q. How long?

A. For about three days, and then he called me up that it was all gone.

Q. And did you see Mr. Krenz' place flooded some at that time?

A. Yes, Carl Krenz.

Q. Did you see the Mustinka river out of its banks at that time?

A. Yes sir.

Q. You know where Twelve Mile Creek flows into the Mustinka river?

A. I did. I was right there. I have been there many times.

Q. And 1910 that country right there where Twelve Mile creek and the Mustinka come together was flooded?

A. Yes, the jam of ice and snow held it back. Can't get away

until they get the channel open. Then it goes down after the channel is open.

1837 Q. Where does it go?

A. Down into the lake.

Q. Through this new ditch now.

A. Through the old river or through the new, or anywheres around the river bed.

Q. Did you see also that same spring Mr. Neumann's land flooded?

A. I saw some of it flooded, yes.

Q. And were you up there in the spring of 1897?

A. I was.

Q. And you saw the lands flooded there in the spring of 1897?

A. Yes sir, I saw it flooded because I couldn't get over it.

Q. And the water went off afterwards?

A. It goes in about three days or so. Frequently I have seen that—many is the spring.

Q. Did you go up in the spring of 1915?

A. Yes, I couldn't get over. I took Teske's girl up with the team, and he comes over in the boat to get her.

Q. Where did Teske come to get his girl?

A. She was down to Wheaton and he wanted her home.

Q. Where did he meet you?

A. At the river within two or three blocks of his house.

Q. And he got the daughter with a boat?

A. Yes sir.

Q. And at that time was the water high at Teske's place?

A. No, it had flooded up there, but in two days he called me up again and said it had gone.

Q. At that time when you took his daughter up was the water high?

1838 A. Yes, it was up pretty well and still raising yet.

Q. Could you see the Mustinka river east of there—was it out of its banks?

A. No, not clear out, only at the low points it spread.

Q. And was the ditch at that time—the cut-off ditch, you know that?

A. Yes.

Q. Was that full of water?

A. Full of snow and ice and water. It couldn't run.

Q. Was the Mustinka river running?

A. No, neither was running very much, but it was cutting a channel through the best it could, working its way, and as soon as it works its way it goes right down. That is all floods do.

Q. Until this snow melted and the ice got out of the river and the cut-off ditch the water would accumulate?

A. Yes, and keep backing up and making a flood.

Q. And when it got open it went off quick?

A. Yes sir.

Q. And went down by this new state ditch towards Lake Traverse?

A. Yes, it would go down in both the ditch and the river.

Q. Now about the water in the spring of 1915—after it went off they got their crops in?
A. Yes sir.
Q. This land was all dry in Clifton and Redpath townships after the water went off?
A. It dried up in a little while.
Q. And crops were put in in good shape.
A. They would get their dry lands in first and then this
1839 land that was flooded would be dried and ready for them later on.
Q. It was all put in in 1915?
A. Yes sir.
Q. Now you spoke of this meridian road in this Bois de Sioux valley?
A. Yes sir.
Q. Did you say you traveled only once in 1913 on that?
A. Yes.
Q. And I understood you to testify that it was not used much on account of being hard to get through on?
A. No, not with cars. They drove a few teams through it, but while I was driving my cars there wasn't any cars could go up through there. It was too rough and gumbo. It wasn't graded enough.

JOHN H. HANSON, having been called as a witness on behalf of the defendant was duly sworn and testified as follows:

Direct examination.

By Mr. Palmer:

Q. Where do you live, Mr. Hanson?
A. In Section 14 of Redpath township, Traverse County, Minnesota.
Q. On what part of Section 14?
A. Northwest of 14.
Q. How long have you lived there?
A. I came up here in 1884, and stayed around Norcross with my brother north of Norcross for a year. I didn't file until 1885.
Q. Then did you go onto this land and improve it after 1885?
1840 A. I will not say I started farming directly. Like any newcomer I had no money to start farming. I was working around most anywhere for the first five or six years.
Q. So you started farming this land to make your home on it about what year?
A. Well, I worked a little on it every year so as to keep it as a homestead, but I didn't settle down to live there permanently until 1890.
Q. Have you resided there continuously ever since 1890?
A. Yes.

Q. What is your age?

A. 54.

Q. You are, I suppose, well acquainted with the upper Mustinka river? which passed through the north half of section 23 just south of Section 14, and passes through the southwest corner of Section 14?

A. Yes sir.

Q. From your earliest acquaintance with this land which you acquired what have been the conditions there with respect to overflow of the river, if any?

A. Well, we have periods of overflow, if could say every five or seven years. I couldn't describe the years, but I can give some years definite that I know from circumstantial reasons.

Q. Well, beginning with 1890 what is the first year you remember of any particularly noticeable overflow?

A. Well, we have overflow of course a good deal always in the spring when the snow bothers, but we don't consider that as bad as some particular years we got it right in haying and harvest and prevented us from cutting the crop. 1892 we had such a flood, but for my part I can say we didn't get the worst of it. They
1841 got hail and rain over in Grant county and stopped them from cutting while we cut pretty near all and had a fair crop that year.

Q. Now speaking of the spring—the time of the spring break-up particularly, do you mean that you have an overflow of the river every spring?

A. Most every spring if there is a lot of snow.

Q. Where does this overflow water from the river go in that particular locality where you live?

A. It goes cornerways a good deal, northwest the most of it.

Q. Does it flow across your land?

A. Yes, it goes out in Section 24 over Frank Satter and right on to me, where the old bed of the Mustinka crosses the ditch.

Q. That is it comes out in Section 24 on the land of Mr. Satter where the old Mustinka river crosses the ditch and then goes across your land in 14 and passes on to the northwest?

A. Yes sir.

Q. Where does that water go?

A. Up through 11 and section 3.

Q. And into what finally?

A. Well, supposed to go up to the Rabbit river. I haven't followed it so far.

Q. Where does it go from Section 3?

A. It is a big ravine up through there.

Q. And that ravine goes on up?

A. Well, into the Tintah township.

Q. Into the Tintah slough?

A. Yes sir.

Q. Well, what I wish to know particularly is whether that overflow water which comes out down there as you say around
1842 section 24 and comes up across section 14 goes back into the Mustinka river?

A. I don't think so.

Q. You think it goes on into the Tintah slough and through this into the Rabbit river?

A. As near as I know.

Q. And with particular reference to this overflow in the spring, you recall that before the first part of the Mustinka state ditch was put in?

A. Yes, we have floods. Of course 1892 was before that time.

Q. I mean about the spring overflows. Did you have them nearly every spring before the first part of the ditch was put in?

A. Oh, of course in the spring of the year it flows all over a good deal.

Q. Now you recollect when this first part of the Mustinka state ditch was put in in 1894 to 1896, along in there?

A. Yes.

Q. Now what effect did that have on these spring floods that went across your land to the northwest?

A. Not a great deal of difference, we generally get the flood just the same. They are generally filled up.

Q. What are generally filled up?

A. The ditch. If it should help any it is filled up in the spring anyway.

Q. So you didn't notice after this ditch was constructed any difference in the overflow to the northwest across your land?

A. Not much difference.

Q. No substantial difference?

A. No.

Q. Now you say you have had overflows there at times
1843 other than the spring floods, sometimes along in haying and harvest time?

A. Yes sir.

Q. What is the first year you recall of that kind of flood?

A. The first year particularly marked since then is 1900.

Q. After 1892?

A. Yes sir.

Q. Now in 1900 what time of the season did it overflow?

A. We had cut probably one-third of the crop when it started to rain so much that we had to stop and what little we cut after it dried up didn't amount to anything because there was such a long time passed that it had just about fallen out.

Q. *Was* was the condition there on section 14 as to overflow water from the river?

A. We had so bad that we couldn't get on to it in time to save the crop.

Q. How deep was the water?

A. From four to six inches or more.

Q. How wide a current?

A. I have got ravines going through there but they flowed over so it covered a pretty wide strip, twenty or thirty rods more.

Q. Considerable current?

A. Quite a current.

Q. And for how long a time did it flow across there?

A. It kept on for a couple weeks or more.

Q. What will you say as to the quantity of water and the length of times as compared with what it was in harvest time of 1892?

1844 A. Well, something about the same. The only difference in 1892 it came on to me later so I saved most of my crop. I had a fair crop, but over in Grant county where the hail and water struck them first they didn't get much of anything.

Q. But in respect to the time and amount of water, would you say it was about the same in 1900 as in 1892?

A. There wasn't much difference.

Q. What is the next year that you recollect of one of those summer floods?

A. 1906 it commenced another wet period, very bad.

Q. What season of the year?

A. Well, I think we had a wet spring, but not so bad, but we had a crop in and yet it bothered us in June and July so we couldn't hardly start haying in time. It was wet but it dried off so we cut most of the hay and started harvesting. It had cut probably thirty acres or so of wheat then it got so bad we had to stop.

Q. What?

A. Too much water so we couldn't harvest any more.

Q. This overflow from the river?

A. Yes.

Q. Passing to the northwest?

A. Yes.

Q. How wide an expanse of water did you have across your land in 1906?

A. Well, it covered all that was low enough along the ravine for thirty or forty rods.

Q. How deep?

A. Well from three to six inches or more.

Q. Quite a current?

A. Quite a stream.

Q. For how long a time?

1845 A. Oh, the worst fall I ever put in, except 1916. The water kind of dried off three times and came a flood and leveled the sloughs again three times and we couldn't plow a bit.

Q. Then what is the next year that you recall that you were troubled with these overflow waters?

A. Well, that was a wet period. I think it lasted for two or three years, but not so bad as the first year. We had some crop in 1907 and 1908.

Q. Did you have these summer floods in those years?

A. We had it very wet. We couldn't get it in on account of the soil being in such bad condition from the year before and no plowing. We couldn't get any more than half a crop in, but we had probably half a crop.

Q. Now in 1907 and 1908 were you troubled with these overflow waters from the river passing to the northwest?

A. Not quite so bad, although there was some.

Q. And that was through haying and harvest time?

A. Yes, we had more or less water. I can't recall the months so well as the first year.

Q. Was it aside from the spring period I mean that you had the overflow water?

A. The spring freshets I don't recall so plain because we have them most every year if there is any snow at all.

Q. 1907 and 1908, do you recall these overflow waters coming across your land later than the spring freshets, later in the season?

A. Not so bad, although it was so wet we couldn't work it properly or get very much of a crop.

Q. Then what is the next year that you recall?

A. Well, we had some pretty dry years again up until 1914, I think.

Q. Now describe the conditions there in 1914?

1846 A. Well, we had in most of the land then into crop, but it got worse all the time so we didn't get much over half a crop at the best.

Q. When did the particularly wet conditions begin in 1914?

A. We had rain in June and still worse in July, I think so we couldn't start haying in time. We was behind with everything, and it dried up so we cut what crop there was. Of course the low places was drowned out.

Q. How about the overflow waters from the river, did they pass across your land in June or July, 1914?

A. They passed enough to fill up the pot-holes and low places and kill the crop.

Q. Now 1915, what will you say of that?

A. About the same only considerably worse.

Q. Did you get your crop in in the spring of 1915?

A. Not quite all. We got in somewhat over half, but we got rain in the middle of the season to stop us and before it dried up it was too late to get in all.

Q. When did your worst rains begin in 1915?

A. I think the forepart or anyway before the middle of May, or the late spring anyway.

Q. And from then on?

A. It got worse so we couldn't do much of anything.

Q. Were you troubled with these overflow waters from the Mustinka river passing across your land to the northwest in the summer of 1915?

A. Yes sir. Any big freshet will overflow there and go to the northwest.

Q. And go across your land?

A. Yes sir.

Q. For how long a period in 1915 did the water go across

1847 your land there?

A. Well if it got a good start it takes from one to three weeks before it ceases, generally.

Q. And in 1915?

A. It was pretty bad.

Q. Wider current than the previous years?

A. Some, not so very. 1915 and 1916 was much difference between it was all soaked and prevented working.

Q. How about the fall of 1915 as to plowing?

A. It dried up so we got some plowed, but it was so sick and sour that we couldn't do any proper work on any of it. That is why we didn't have much show for a crop.

Q. In the spring of 1916?

A. Well, 1916 was so much worse. Besides that it wasn't all plowed. It started early to rain so we didn't have very much in there.

Q. Didn't get a chance to put in much crop?

A. I had in about sixty acres.

Q. Did you harvest any of that?

A. I harvested some pieces on the first twenty-five acres, but I never tried to thresh.

Q. What was the trouble?

A. Well the water was there continually enough to drown anything.

Q. When did your real wet conditions being in 1916?

A. From the latter part of April or the 1st of May.

Q. Right straight on through the season?

A. Yes sir.

Q. How about the rainfall?

A. Well, I don't think the rainfall was so much heavier than 1915, but we were in such condition the land couldn't be worked and of course we were just as bad off. It didn't produce
1848 anything what we did put in.

Q. The land was all water soaked?

A. Yes sir.

Q. In 1916 what were conditions as to these overflow waters going across your land?

A. It went through about as bad as ever, if not worse.

Q. As bad or worse than in 1915 you mean?

A. Yes sir.

Q. For how long a time?

A. Off and on all summer pretty well.

Q. How wide a stream of water?

A. Covered a good deal besides the ravines, as I say, from twenty to thirty rods.

Q. Considerable current?

A. Quite a stream.

Q. And its depth.

A. A good deal of depth to it.

Q. Take those three years, 1914, 1915 and 1916, Mr. Hanson, as to wet conditions there and flood conditions, and compare them with any other years that you have known since you have been there, what would you say?

A. I would say they been the worse we ever seen, because we always produced a little bit whether wet or dry except 1916, when we didn't get anything.

Q. With respect to the amount of rainfall?

A. Well, I suppose it was a good deal more rain, but it couldn't have flooded us so much worse.

Q. And with respect to the dry spells in between the rains?

A. The trouble was there wasn't any dry weather; very litle sunshine and it didn't dry.

Q. Now didn't this ditch help you any, this Mustinka
1849 ditch?

A. It probably did a trifle in the beginning, but that old ditch is filled up long ago and it never was able to take care of the water anyway, or probably one quarter of it.

Q. Never amounted to much?

A. Not sufficient.

Mr. Bronson: The county ditch?

A. No, the Mustinka state ditch.

Q. Now, Mr. Hanson, with respect to other lands to the east of you in sections 13 and 18, was there any overflow of the waters from the Mustinka river across those lands as well as your own?

A. Of Redpath?

Q. Yes.

A. Yes, they had some of it, although they came on 13 east of me more direct from the railroad to 12 and 13, and not so straight from the south.

Q. They came more westerly from the railroad?

A. Yes sir.

Q. Then where did they go?

A. Through section 11 and up through the same ravine as my water goes.

Q. These flow channels rather seem to concentrate in this section 3?

A. Yes sir, sections 11 and 3.

Q. Now with respect to the lands westerly of you in 1915 and 1916, with reference to overflow waters?

A. They are bothered considerable with the same water. Not always the same water, but of course that ditch overflows at different places.

Q. Where does that water go from 15 and 16?

A. Northwest, mostly all of it.

1850 Q. To the Tintah slough?

A. Yes sir.

Q. Have conditions been any better there since this ditch was put in?

A. Not very much.

Q. And when have conditions been the worst there on sections 15 and 16?

A. The late years been the worst ever experienced I think.

Q. I call your attention to Defendant's Exhibit 98, Mr. Hanson, what is that, if you know?

A. That is a farm in Section 16, I think.

Q. Whose farm?

A. Ole Satter. It used to be Otto Engstrom.

Q. What part of Section 16?
A. It is along the road in the middle of the section.
Q. Which side of the Mustinka river?
A. North of the river, of course, straight west of me.
Q. You live on the south part of your quarter?
A. No, I live on the northwest quarter.
Q. Which part of your quarter do you live on?
A. Just about in the middle, in the north half, between the two quarters.
Q. This house is west of your, this Engstrom place?
A. Yes, straight west.
Q. And that photograph represents conditions when?
A. In the year 1916 I think when the water was so bad, 1916 it says. 1916 and 1915.
Q. No, it says Section 16?
A. Yes, that is what it is.
Q. What year was it overflowed?
A. They were overflowed both years, but I think this was taken in 1915.
1851 Q. Does this photograph, Exhibit 98, correctly represent the conditions there at the Engstrom farm in the year 1915, the summer of 1915?
A. Yes sir, both 1915 and 1916.
Q. Did you see them?
A. Yes, I traveled that road.
Q. When you traveled that road west did you see these conditions as represented on this photograph?
A. His buildings are right close to the road.

Mr. Palmer: Defendant's Exhibit 98 is offered in evidence.

Q. I show you Exhibit 99. What is that, if you know?
A. That is about the same place I think, only the house here and the barn and granary on the other.
Q. That is the dwelling house on that same farm as represented by the photograph, Exhibit 99?
A. Yes sir.
Q. And Exhibit 98 represents the granary and barn on that same farm?
A. Yes sir.
Q. Now that represents conditions when?
A. Well, as I say, both of those years wasn't much difference, both 1915 and 1916. They were flooded so bad that I wouldn't see much difference to it.
Q. Does Exhibit 99 correctly represent conditions on that farm in the summer of 1915 and 1916 both?
A. Yes.

Mr. Palmer: We offer Defendant's Exhibit 99 in evidence.

Q. What is Exhibit 100, if you know?
A. This house is on the northwest corner of 16, belonging to Mr. Brantigan.

1852 Q. And that represents the conditions there when?

A. At the same time. They were all taken at the same time, but whether they were taken in 1915 or 1916 I will not guarantee.

Q. Does that photograph 100 correctly represent the conditions there at the Brantigan house in the summer of 1915 and 1916?

A. Yes sir.

Mr. Palmer: We offer in evidence Exhibit 100.

Q. I show you Exhibit 103. What is that if you know?

A. Yes, I think I know.

Q. What is it?

A. That is my house shown from the road, taken a little to the east of there at the bridge over the ravine a quarter of a mile north and a little east of the house.

Q. That represents your home farm, does it?

A. Yes.

Q. And at what time?

A. Well, about June, 1915, I think.

Q. Does it correctly show the condition there at that time?

A. Just what it looked like.

Q. And does it correctly represent the condition there in the summer of 1916 too?

A. Yes sir, just as well.

Q. What is this water we see around these buildings—where does that come from?

A. From the state ditch.

Q. From the overflow of the state ditch and the Mustinka river?

A. Yes sir.

Q. This spring of 1917 did you have the same conditions there as to overflow from the state ditch and the Mustinka river?

1853 A. It kept on for two or three weeks so I couldn't get my crop in in time this year.

Q. Coming which way?

A. Coming cornerways from me the same as ever.

Q. And these other lands the same?

A. Yes sir.

Q. You didn't have much better conditions in the spring of 1917 than you did in 1916?

A. Yes it was much better. It dried up thoroughly when it did so we put in most of it and got some crop. The early spring it looked just as bad for a long time.

Mr. Palmer: We offer in evidence Defendant's Exhibit 103.

Q. I show you Defendant's Exhibit 106. What is that, if you know?

A. I am pretty sure I know the place, although it ain't so plain. It is over three miles west of me, or three and a half.. That is, as near as I can say, Carl Krenz' barn. The house don't show so plain.

Q. You are certain of what it is then, Mr. Hanson?

A. I am pretty certain, but I won't guarantee that like the others.

Q. Are you familiar with what is called the Redpath sloughs, down in Sections 21, 22 and 23, I believe it is, of your township?
A. Yes.
Q. Are you familiar with that whole area in the Redpath slough?
A. Yes, I am.
Q. When did your acquaintance with that area begin—when did you first know that country?
1854 A. Well, I have traveled over it now and then ever since I settled there.
Q. Now in 1890 when you came there will you tell us something about these Redpath sloughs?
A. Well, there wasn't very much difference. We had some years that was just as dry between the wet years and cut hay there.
Q. Just as dry as they are now?
A. Yes.
Q. And what years do you remember particularly of making hay there, or did you make hay there?
A. Well, I had plenty low land of my own so I never put up hay outside.
Q. Do you know any of those who did put up hay there?
A. I have known them, yes.
Q. Who were they?
A. Well, they came for so long a distance from the town of Clifton and the south part of Redpath clear over close to Wheaton, some of them.
Q. They would go there and put up hay?
A. Yes.
Q. Now take the years 1891, 1892 and 1893, along in there, was hay cut on those Redpath sloughs, do you know?
A. I am not able to describe very much of the years. I was out there one year with Pete Peterson who threshed for me and tried to save some hay. It was dry and someone had started a fire and it was so dry it burned clear down to the clay and they couldn't get it out, until he took the threshing crew out and plowed around his stacks and throwed off that sod and plowed again so as to get below the moss or top soil that would burn, but I am not able to describe the year.
Q. After this was the first part of the Mustinka state
1855 put in?
A. Yes sir.
Q. After this was put in were those lands in the Redpath sloughs more dry than they were before?
A. Not a great deal.
Q. You didn't see very much difference?
A. Not very much.
Q. And in 1914, 1915 and 1916 what was the condition of those Redpath sloughs?
A. Well, it was as bad or worse than ever because nobody could hardly pass through them.
Q. Do you mean they were as bad or worse than they were before any ditching was done?
A. Yes, they were as bad as they ever was.

Cross-examination.

By Mr. Bronson:

Q. Where are the Redpath sloughs?

A. Well the worst of the slough there is considered 21, 22 and 23. That is all hay land. Nothing else.

A. Yes, I seen it. I seen the conditions there before it was put in.

Q. Now you are acquainted with this first Mustinka state ditch?

A. Yes, I saw it. I saw the conditions there before it was put in.

Q. And seen the conditions after it was put in?

A. Yes sir.

Q. Now before the ditch was put in, the first Mustinka state ditch, the river through these Redpath sloughs angled back and forth?

A. It goes crooked, of course.

Q. And when the first state ditch was put in it cut across the river in some places?

1856 A. Yes sir.

Q. And made a new channel some places through sections 22 and 23 and it abandoned the old Mustinka river channel and went straight across and then northwest towards what is now the cut-off ditch?

A. Straight west.

Q. Did it not?

A. Yes sir.

Q. So before you had any Mustinka state ditch there at all you had the old Mustinka river?

A. Yes sir.

Q. And after the first state ditch was built you had besides the old Mustinka river this new channel of the first Mustinka state ditch?

A. Yes sir.

Q. So instead of having one you had two? Is that correct?

A. Yes sir, we had the old river bed just the same.

Q. Now in the spring after this was constructed did the waters go into the old Mustinka river?

A. Well, on any high tide. Every spring flood will go into it and in the summer time if there is heavy rains enough to overflow it.

Q. And did waters go into this ditch?

A. Of course.

Q. So after the first Mustinka state ditch was constructed when any kind of flood waters came or any waters came high enough so the ditch wouldn't carry all of them some of them would go into the old Mustinka river and some would go into the Mustinka state ditch?

A. Yes sir.

Q. And when the waters got too high so the old Mus-

1857 tinka river wouldn't carry them and so the Mustinka state ditch wouldn't carry them they would go outside the banks and flow north and northwest as you have described?

A. Over us, yes.

Q. Now the first state ditch after it was constructed and the old Mustinka river could carry more water than the old Mustinka river alone—there is no question in your mind about that is there?

A. I admit that it might have done it in the first part of the time after it was made.

Q. Is there a ditch there now?

A. It is a small ditch there now.

Q. The first Mustinka state ditch you now call a small ditch?

A. Yes, very many of the places.

Q. It is still in the same location as when it was originally constructed?

A. Yes sir.

Q. It has banks and a channel has it not, now?

A. Well the trouble with it the banks are very low and on low land it is filled up so there is very little of a ditch. That is my view of it.

Q. You mean as years have gone by since it was constructed it has filled up somewhat?

A. Filled up considerable.

Q. Has it become any deeper by reason of water running through it than when it was first constructed?

A. I admit also where it empties into Twelve Mile creek it is quite big, but the current is stronger there I suppose.

Q. The first Mustinka state ditch empties into Twelve Mile creek?

A. Yes sir.

1858 Q. Now what land do you own?

A. I have the north half of 14 as a homestead entry claim, in the township of Redpath.

Q. And there is a ditch on the north side of your farm?

A. Yes.

Q. Constructed when?

A. Two years ago.

Q. In operation in 1916?

A. Yes.

Q. And in operation in 1917?

A. Well, we got it late in the season of 1916 so it didn't do me very much good.

Q. That is County ditch No. 9?

A. Yes.

Q. It was finished late in the season of 1916?

A. Yes sir.

Q. Which end was finished?

A. The east end.

Q. How much of the east end was finished in 1916?

A. Well, all the ditch was made in 1916 except a half a mile on the west end, about a half a mile.

Q. That is they were constructing that ditch during the summer of 1916?

A. Yes sir.

Q. Except half a mile on the west end?

A. Yes sir.
Q. Now you have a ditch also on the south line of Section 14?
A. Yes sir, constructed this year.
Q. County Ditch No. 24?
A. Yes sir.
1859 Q. And that carries water into this Mustinka state ditch?
A. Yes, that empties into the old ditch.
Q. And this County Ditch No. 9 carries water into what?
A. Into Twelve Mile creek.
Q. Across the old Mustinka river and across Five Mile creek?
A. Yes sir.
Q. This County Ditch No. 9 cuts around the corner?
A. On the corner of 14 and south for I think a thousand feet.
Q. To meet what?
A. A ravine coming through 13 and 14 there.
Q. Now there is no question in your mind, is there, Mr. Hanson, that the first Mustinka state ditch carries water faster than the old Mustinka river did in its bends and angles?
A. Well, it possibly carries a little more water. I wouldn't altogether deny it.
Q. And you don't deny that the first state Mustinka ditch carries water that formerly was not carried when you didn't have it there, didn't have the ditch there?
A. Well it has always carried; the only difference is if it should be a little slower.
Q. What is that?
A. Very little difference that I see unless it should go a little faster now.
Q. Was water running in County Ditch No. 9 in 1916?
A. Yes, the latter part of the season.
Q. How big is county ditch No. 9, generally speaking?
A. It is a pretty fair ditch at the west end.
Q. About how big?
1860 A. Well, I think it is from six to seven feet, but up east by my place it ain't.
Q. And how wide?
A. Twelve to fourteen feet at the top. There is a five foot bottom.
Q. And county ditch No. 24 about the same size?
A. A trifle bigger.
Q. Now this land that you have on Section 14 is good land.
A. I think it is good land.
Q. The soil is good?
A. If you can properly drain it, yes.
Q. The great trouble you have always had with that land is the question of drainage?
A. Yes sir.
Q. Getting rid of surplus waters?
A. Yes.
Q. And if that land was properly drained it would be just as good as any land in Traverse county?
A. I suppose it might.

Q. Now you had considerable trouble in raising crops on this land in the years back when you had flood conditions?
A. Yes sir.
Q. That is true, is it not?
A. Yes sir.
Q. You had it in 1900, 1906, 1907, 1908, 1914, 1915 and 1916?
A. Yes sir.
Q. And that is quite true of those lands generally speaking around you, is it not?
A. A good deal of them.
1861 Q. Now you spoke about Section 13 about some waters, I think, going across there and into Section 11, and you spoke about a railroad, coming from a railroad. You mean the Great Northern?
A. This water we have been talking about before that comes over by the railroad and coming through 12 and 13?
Q. That is the Great Northern railroad?
A. Yes sir.
Q. Which runs through Norcross?
A. Yes sir.
Q. That is these lands in flood times receive some flood waters from over towards the Great Northern railroad?
A. Some of it comes from over there, yes.
Q. Across the land?
A. Yes.
Q. And it would go over into 12 and over into 13 and would go northwesterly over into 11?
A. More in 11 and 12. Not so bad in 13.
Q. Now isn't it true that after this first Mustinka state ditch was constructed some more additional flood waters came down from Grant county through the old Mustinka river, and through this ditch which formerly, some of them, went up along westerly of the Great Northern railroad track and then over across into 12 and across in 11 and then northwest?
A. I cannot say because it is going over now just the same and the ditch is never put in as far as the railroad any way so that the water is coming just the same.
Q. We had some testimony here yesterday by Mr. Christophel whose farm is near where the Mustinka ditch joins on to the old Mustinka river?
A. Yes sir.
Q. And he describes flood conditions existing there at
1862 different times when waters were flooding the old Mustinka river and the Mustinka state ditch and overflowing, and some of them came up northerly and northwesterly and then in a northwesterly direction, generally speaking?
A. Yes sir.

Mr. Palmer: I object to that. He didn't say any such thing.

Q. Also that some of these flood waters came down from the Mustinka river that runs east and west there in Grant county in flood

times, and with respect to these conditions I am asking you whether or not you observed that condition to be true in flood times down along in the Redpath sloughs, and by your land?

Mr. Palmer: Objected to for the reason that the witness doesn't and couldn't and hasn't purported to know the specific place from which the waters came that overflowed across his land.

A. Why I couldn't understand anything in that question but what we have described and what I have answered. They always came from that way and come now.

Q. You have already described that the old Mustinka river overflowed and you said also that the Mustinka state ditch overflowed?

A. Yes sir.

Q. And spread over on the lands around about you?

A. Yes sir.

Q. And when it overflowed some of this water went to the north and northwest of you?

A. Yes sir.

Q. Is that correct?

A. Always did.

1863 Q. And some of these flood waters came down the Mustinka state ditch, did they not?

A. Why, of course it must carry some of it.

Redirect examination.

By Mr. Palmer:

Q. With respect to these overflow waters across your land in Section 14 in the spring of 1917, how did they compare with former years?

A. Just as bad as ever except that we got good weather afterwards so it dried out, but it took a long time so it prevented putting in the crop early enough.

C. H. CHRISTOPHEL, having been recalled as a witness on behalf of the defendant, testified as follows:

Direct examination.

By Mr. Palmer:

Q. I think I neglected to ask you when you were on the stand before whether you had this condition of overflow from the Mustinka river across your land in Section 17 of Gorton township, Grant county, in the spring of 1917?

A. We did early in the season from the time of the snow backing up the water in the river. There was as heavy an overflow then as we have had at any time.

Cross-examination.

By Mr. Bronson:

Q. Mr. Christophel, that water drained off rapidly, did it?

A. It did just as soon as the river opened up so it could
1864 get down in the river again.

WILLIAM F. HOUSTON, having been called as a witness on behalf of the defendant, was duly sworn and testified as follows:

Direct examination.

By Mr. Palmer:

Q. Where do you live?

A. River Falls, Wisconsin.

Q. How long have you lived there?

A. Well, I have lived there in that county, in the two counties for sixty years.

Q. How old are you?

A. 69.

Q. What is your business?

A. Well, I have been farming, and I have been in the banking business, and I have shipped horses and I have been in the lumber business, buying and selling land, loaning money—kind of general business. I am not in anything now.

Q. Mr. Houston, are you acquainted with Traverse county, Minnesota?

A. Yes sir.

Q. And with the lands in Richland county, North Dakota?

A. Yes sir.

Q. And Roberts county, South Dakota?

A. Yes sir.

Q. When did you first become acquainted with that locality?

A. Well, I drove down there from Fargo in 1879 to Ortonville.

1865 Q. Did that take you through this territory that I have described?

A. That took me right up the Red River from Fargo right down to Ortonville; on the Dakota side down to White Rock, and on the Minnesota side from White Rock to Ortonville.

Q. Did that take you right through these lands that have been described here in the Bois de Sioux valley from White Rock up to the Rabbit river?

A. Yes sir, but I have been up there to stay through the summer. I put in most of the years from 1885 to 1908 in the summer up there. Shipped up horses and farmed there. Bought and sold land, loaning money.

Q. Did you know the country in there somewhat from 1879 to 1895?

A. Yes, along in the eighties I was up there a lot. I sold horses in Herman, Minnesota?

Q. Did you own some land up in that territory?

A. Yes sir. I had a good deal of land in that territory. I had about 3,000 acres of land in Traverse county, and I had about 1,500 acres in Richland county, North Dakota.

Q. And some lands in Roberts county, South Dakota?

A. No, I never happened to own any in Roberts county. I do lots of business there loaning and selling horses and so on, but never happened to get a hold of any land there.

Q. Where was the center of your business operations in Roberts county?

A. Well, all over the western side of Roberts county.

Q. From what town?

A. From Wheaton and White Rock and Fairmount. I built a bank in Fairmount and one in White Rock. I was a stockholder.

Q. When did you put in a bank?

1866 A. In 1895 in Fairmount and in 1896 in White Rock.

Q. When did you become the owner of 3,000 acres of land in Traverse county?

A. Well, I had it all times. I com[illegible]ed buying land there in Traverse county, I guess, and I had land there until 1909 when I sold it all out.

Q. Did you operate some of this land?

A. Yes, I rented it as long as I had it, all of it. I never had any big tract. It was all in quarter or half sections.

Q. Where were your lands mostly in Traverse county?

A. In the town of Walls, town of Windsor, town of Lake Valley, town of Croke, town of Monson and town of Taylor.

Q. Did you have some lands during that same period in Grant county?

A. Yes.

Q. Where?

A. I had some in the nineties, I bought a section of land in 1892 in Grant county in the town of Logan, two miles west of Herman, right adjoining or pretty near the line of Traverse county.

Q. Did you during this period of your ownership of the lands in Traverse county have occasion to travel over and observe the lands in the town of Clifton easterly of Twelve Mile creek and in the town of Redpath easterly of Twelve Mile creek and south of the Tintah slough region just easterly of the east line of Traverse county, and in the towns of Gorton and Logan in Grant county?

A. Yes. I done a good deal of business in Grant county. Used to sell a good many horses in Herman and I had dealings with a good many of the settlers all over there, and always kept a horse and buggy or team from 1885 until 1909 and I drove all over that

1867 territory.

Q. Now speaking particularly of this territory that I have described here, Mr. Houston, it has been called a delta zone?

A. Well, what do they call that Delta zone.

Q. Well, it is the land I have just mentioned.

A. You mean in the town of Redpath, Tintah and Taylor and up in Wilkin county?

Q. No I mean the lands in the town of Clifton just easterly of Twelve Mile creek?

A. Yes.

Q. And the land in the town of Redpath easterly of Twelve Mile creek and southerly of the Tintah slough region?

A. Yes.

Q. And the lands to the east of those in Grant county?

A. In the western part of Grant county?

Q. Yes.

A. Yes, I drove all over that territory. I had to drive that territory lots beginning in 1885.

Q. Now during that period of your acquaintance with it and driving over it what kind of territory was that?

A. Well, there was some land over in Clifton and Redpath that was pretty level and flat, but in the early days that land it was settled up more than it is now. There was more settlers. The homesteaders when I first went up in there was all poor and I generally had to take a mortgage on crops and I get to get around and look after these crops. There are more foreigners owns land there now than then. It was mostly homesteaders at that time.

Q. How were their crops?

A. They was good only when they had floods in the spring. If they had a big snow there they would have a flood in the spring and there was two or three years they had big floods. That is in 1868 1899 or '98 and 1900. There was two years that I had lots of crops there out in the town of Dollymount, east and south of Wheaton, and we didn't get much there one year. I don't know whether it was '98 or '99. It was one of them years. They didn't get much in that township. They couldn't cut it.

Q. They had floods in harvest time?

A. Yes sir. Rained every night or every day. Had awful rains. There was two years we had bother that way. I had lots of crops all over but I cut most of my crops. I mostly bought dry land, land that had good drainage.

Q. I am not speaking particularly of your lands but the lands of those settlers in Clifton and Redpath and up in there?

A. Well, there was two years in harvest time we had awful rains. I can't tell exactly the year.

Q. Did the spring floods interfere with cropping of the land?

A. Well in 1897 they had a good deal of trouble. We had a big snow. I went up there in February and they had a big snow and over in Clifton and Redpath they had trouble that spring in getting in their crop.

Q. How about other springs?

A. Well, some springs would be wet if there was a big snow, but they would dry up, but in 1897 it took most all summer to dry up.

Q. In ordinary years what kind of crops did they have there?

A. Well some years they didn't have a big crop and some years they would.

Q. How would their crop conditions there compare with other communities around them such as Dollymount and Croke?

1869 A. Well they would compare with Dollymount all right and part of Croke, but part of Croke was drier.

Q. In mean in ordinary years, ordinarily dry years?

A. In ordinary years they had just as good crops there as they had anywheres else, as good as they had in Walls and Windsor and that is along Lake Traverse. That is also dry because they are on the bluff over the lake and there is runs and draws that draws it.

Q. In ordinary years you think they have just as good crops in this territory you have described in Redpath and Clifton as they did any where?

A. Well in 1894 they had a good deal better crop.

Q. Now were the lands in this particular part of Clifton and Redpath that I have mentioned of less value than the lands in the townships around them on account of water?

A. They was less value than it was in Lake Valley and Walls. Walls and Lake Valley was dry towns and they never had much bother with water.

Q. Compared with Dollymount?

A. Just as good and better.

Q. Compared with the other lands over in Gorton and Logan in Grant County?

A. Well, the town of Logan over in Grant county is not so good land as Redpath and Clifton and Tintah.

Q. Is the town of Gorton as good?

A. Yes, it is pretty good. I guess it is a little better than the town of Logan.

Q. Now this land that you own in Richland county, North Dakota, 1,500 acres, where was that located?

A. Well, the land I had in Richland county—there was about three quarters over on the Wild Rice river. It was in the town of Fairmount. I had some land in 21.

1870 Q. Section 21?

A. Yes sir, Fairmount township, 129-47.

Q. That would be the south part of Fairmount township?

A. Yes. I owned some land in 21, and some land in Section 28, Section 29, Section 32 and Section 34.

Q. All in township 129, range 47, Fairmount township, Richland county?

A. Yes sir. Half the township lays in Richland county, North Dakota, and the other half lays over in Minnesota.

Q. But now that we may clearly understand the location of that land, was it the land that has been spoken of here as in and around the station of Blackmere?

A. Yes between Blackmer and White Rock, all of it, in North Dakota.

Q. And it was all north of the south line of North Dakota?

A. Yes, sir. Right in the corner of the county. I had 160 acres in 21 that joins Blackmere.

Q. That would be the northwest quarter of 21?

A. I think so. Then I had 440 acres in 28 and 29, and I don't know which, but I think I had one quarter in 28. I bought five eighties there in a body, part in 29 and one quarter in 28. Then I had a 40 a little farther west in 29. Then I had three 80's in 32, and I had four lots along the state line, Lots 1, 2, 3 and 4 in 34.

Q. When did you acquire this land?

A. I bought it in 1896, from 1896 to 1898.

Q. Had you known the land prior to that time?

A. Yes.

Q. For how long a time?

A. I owned the land ever since I drove over it in 1879.

Q. What condition was it in from 1879 to 1896, the time
1871 you bought it?

A. Well, it was pretty good, in pretty good condition from 1879 to 1896. Sometimes when they had a big snow they had plenty of water there, but there was some dry seasons and some wet season-. In 1897, the spring of 1897 there was a big snow and it was mostly covered with water. They couldn't put in any of it much in 1897, and that is the year that I bought the most of it.

Q. What did you buy it for, how much an acre?

A. I paid from $5 to $8. I guess I paid for that 400 acres, $10, from $5 to $8 an acre.

Q. Did it have any buildings on it?

A. Yes, this that I had in 29; that that I had in 29 had no buildings on it. There was only about twenty acres of it broke when I got it. In 28 and 29 there was buildings, and that that I had in 34 there was a shanty on, with 92 acres broke.

Q. Had there been settlers on there prior to the time you bought it?

A. Yes, sir, on all of it.

Q. What became of the settlers?

A. Well that quarter that I bought by Blackmer. He had three quarters there. His buildings was on a quarter in 20 west of it, and he had no buildings on that. He had about 20 acres broke when I bought it, and I bought that in 1896, and then this that I had in 34, 28, and 29 there was buildings on.

Q. Settlers on them?

A. Yes, Chilson.

Q. What became of those settlers?

A. When I bought the land that was in 28 and 29—well, which pieces do you mean?

Q. On the land generally?

1872 A. Well, 21, when I bought it Blackmere lived on the other half section, and I had a mortgage on his place, and he wanted to sell me that quarter, and he had sold this quarter on crop contract and I had a mortgage on it, and he wanted to sell it to me and I bought it.

Q. What did you pay him for that?

A. Well, I paid him $1,200 for the quarter section. He had it sold for $2,000 on crop payment, with only about 20 acres broke. The fellow backed up and he gave up the contract and I sold it two

or three times on crop contract. I thought it would dry up and we would make a little something on it, but there was no crops on it in 1897. 1898 there was part put in and in 1899 most all of it was put in.

Q. In 1897 there was no crops on this land at all?

A. No, they couldn't put in no crops—well there was a little on this Chilson land.

Q. Take all of that land in there from White Rock up to Blackmer, a little over two miles wide from the river, what was the condition in the year 1897?

A. Well, Blackmer had a piece there and this Chilson land part of it was kind of high. There was some of that put in. Not much. The rest of it wasn't put in in 1897.

Q. What was the trouble with it?

A. It was overflowed with water.

Q. How long did the flood water stay on?

A. Most all summer. Couldn't cut even the hay land.

Q. How did you see conditions there in 1915 on that land?

A. No, 1915, I was up there in June and it commenced to rain and rained bad, and then in the fall when I was up there in 1915 it had dried up considerable again, but it wasn't anything like it was in 1897. It wasn't as much water when I came up there,
1873 but I didn't get up there until about the middle of October, 1915.

Q. And in 1916 you didn't see it until about the middle of October?

A. Well, about the 10th of October last year, and they said they had as much as in 1897 and some of them said it wasn't as much. I was there last fall, in 1916.

Q. You say you were there in June, 1915?

A. Yes.

Q. How were flood conditions as you saw them there then as compared with 1897?

A. There was lots of grain put in in 1916 in the spring but drowned out afterwards. It commenced to rain in June and rained all summer, the same as it did here. We had the same conditions here and it was awful wet the fall of 1915, and it didn't dry up and of course in the spring of 1916 it was wet from the year before, and they got that rain again and it rained and it was in bad condition in 1916.

Q. Was it any worse, from your knowledge of conditions there, Mr. Houston, in 1915 and 1916, then it was in 1897?

A. Oh, no. It wasn't so bad, what I seen of it. When I got there in October. But it had been worse. It wasn't near as bad then as it was in October in 1897.

Q. 1916 in the fall was it as bad as it was in the fall of 1897?

A. No, but you understand I wasn't there in the spring when the highest water was.

Q. I understand, we are speaking of conditions when you were there. What occasion did you have to keep in touch with this land north of White Rock and on up?

A. I cropped it three or four years, rented it out and had lands for sale on crop payment and had to be there and attend to my share of the crop and get my interest.

1874 Q. And when did you finally dispose of it?

A. I was doing business and driving over it all the time over to my Wild Rice farm and I had farms right east of White Rock and farms farther over, and I was driving around and loaning money to some of my old customers and driving around all the time.

Q. You had your bank at Fairmount?

A. Yes, I had the bank there two years and I sold it out. I was interested in the bank at White Rock for seven or eight years.

Q. And have you some relative at White Rock?

A. I have a son-in-law there who is a banker.

Q. Your daughter is married and lives there?

A. Yes, sir.

Q. And is he running this same bank that you founded there?

—. ——.

Q. And when you were there in 1915 and 1916 as you kept in touch with the conditions there, I suppose this way to some extent visiting your daughter?

A. Yes, sir. I came up there and stayed a while in the fall and attended to my collections, but up to 1908 I was there every summer. In 1909 I sold out, and I only go there in the fall.

Q. You disposed of the balance of your land in 1909?

A. Yes.

Q. What did you get for your lands?

A. Which, over on the flat there, the Richland county land, or my other land over in Traverse county?

Q. When did you dispose of the land you had in the flats in Richland county?

A. I sold the last of it in 1904.

1875 Q. What did you get for that land?

A. I guess that 400 I sold that back for what it cost me. I think I sold two hundred acres to one man and two hundred acres to the other man's wife on crop payments for $2,400 each, which would be $12 an acre. I got $4,800 for it. And they sold the land out to somebody from Iowa or Illinois, and I took my money out and they made other loans. I thought I would get out of it.

Q. What did they get for it?

A. I don't know. They got a good deal more. I don't know how much?

Q. They sold to Iowa parties?

A. Yes, or Illinois. They came from Nebraska, and Illinois and Iowa and all over up there and bought lands.

Q. What I want to know particularly what is the highest price you got for any of that land down in Richland county?

A. I had four lots there—there was 160 acres in them—that is in 34—but it is meander land. There is only 92 acres. It is a mile long. There is only 92 acres of deed land, but there was about 160 acres or 170 acres of land of what they call meander land.

Q. Riparian land on the river?

A. Yes, sir. I got $2,000 for that. I got the most for that of any.

Q. Now, take the land beginning at the south state line of North Dakota above White Rock there and from the Bois des Sioux river over west to the hills, and on up through Blackmer—what would you say is the value of that land now?

A. Well, I couldn't say that because I don't know what it is bring- but I know I could put my own value on it, but I couldn't say what it would sell for.

1876 Q. Well, what is a fair valuation from your knowledge of conditions?

A. What I would give for it?

Q. Yes.

A. Well, I wouldn't give any more than I give them, from $5 to $10 an acre.

Q. Take 1914 and 1913 before they had the floods of 1915 and 1916, Mr. Houston, what would you say about the value of it?

Mr. Bronson: I object to the question as well as to the prior question upon the ground it appears that he doesn't know the market value and is stating merely his opinion and the evidence is therefore incompetent.

Q. That is exactly what I want, Mr. Houston, is your opinion. You are a man of experience and you know that land?

A. Well, as I say I wouldn't want it because I had experience enough there.

Q. Well, I mean in 1914 and 1913 before they had these two wet years there?

A. Well, wouldn't have—if they had been offered to me I wouldn't have given no more for it than I did at the time I bought it.

Mr. Bronson: Move to strike it out as improper testimony and not the measure of value, merely an opinion of the witness and not the market value, not tending so to prove.

Q. Now, Mr. Houston, something has been said here about conditions of flood there in the town of White Rock in 1915. Did you observe those?

A. Well, I don't know anything about that, I wasn't there. I was there in June, the time the rains commenced, but it wasn't

1877 bad then, somewheres about the middle of June. It wasn't bad in 1915. I wasn't there in 1916.

Q. Were you there in the fall of 1915?

A. Yes, and the conditions wasn't bad then.

Q. There in the village?

A. Yes, I was there a couple of weeks.

Q. What time in the fall?

A. I went up there about the 10th of October.

Q. And the conditions were not bad?

A. I stayed there about three weeks. No they wasn't near as bad as in 1897 in 1915 when I was there in October.

Q. Were the conditions of flooding there in the town as bad as in 1897?

A. It has been worse earlier in the season. No, they weren't as bad as in 1897?

Q. What were the conditions in 1897 there in White Rock?

A. Well, there was water all summer, the summer of 1897 all over the flats there. They was bad all fall, all that season, but they dried up some in the winter.

Q. They were bad where with respect to this vilage of White Rock?

A. The village of White Rock was worse in 1897 a good deal than it was in 1915 or 1916 in the town.

Q. More water standing in the streets and around the houses?

A. More water in the sloughs and around in the low places all over, and more out on the farms. I drove out in the country and they was worse in 1897 than they was in 1915 and 1916 in October, but the earlier part of the summer I couldn't tell about. They said they had been higher in the earlier seasons.

Q. Was this village of White Rock flooded there in 1897?

A. Not in the fall.

1878 Q. Well, in the summer?

A. In the summer they said there was. I wasn't there—Oh, in 1897, yes. All the sloughs and low places and the side of the streets and all over was worse in October in 1897 than they was in October in 1915 and 1916 when I was there.

Q. Now did they make some change in the town after this flood of 1897?

A. They made a lot of change-. My son-in-law had some lots, about sixty acres and he laid it out in lots and they moved the town since 1897. They moved the town up farther, and most of it is built upon them higher places.

Q. They moved the main street?

A. Yes, sir. Main Street used to be down along the railroad in the '90's, and I think the last part of the '90's or the first part of 1900 they moved it back, all the business part of it.

Q. Take the land north of Blackmere, a strip right along near the Bois des Sioux river, say for half or three quarters of a mile west.

A. You can take a mile there or little over a mile right by Blackmere, but it gets narrower on up. The river swings in a little.

Q. Well that *the* river land west of the river from Blackmer up to Fairmount, what shape was that in when you first knew it?

A. Well, there is a good road runs from Blackmere half a mile—it used to run straight, and then there was another road over two miles west. Well, the road that runs from Blackmer from the corner of the Blackmer elevator straight north——

Q. To Fairmount?

A. That is about half or three-quarters of a mile. You have to go west about half a mile to get into Fairmount. From

1879 there to the river there is a little over a mile. It will average about a mile.

Q. Now tell us about that?

A. Or a mile and a quarter, something like that. Well, that land is low and wet, and then there is also a slough runs over along the bluffs there through 32 and the western part of 29. There is a slough running up in there and there used to be more water running in there than there was in the Bois des Sioux, and that swings in north of Blackmer. There is where Tom Dunn told you there is one section—there is a strip in there about a mile north of Blackmer that is pretty wet.

Q. That has cat-tails on it?

A. Yes, sir, but you go north of there again and west of the railroad and it is pretty dry. Most of it east of the railroad is wet, but west of the railroad used to be dry and in them wet seasons.

Q. How has this land right along the river east of that road that goes north from Blackmer to Fairmount been?

A. Well, that is low, wet land all the way up, east of that road.

Q. Valuable?

A. Well, I wouldn't consider it very valuable. They used to cut lots of hay there before they broke it up. It was good hay land.

Q. What is it worth?

A. Well, as I say, I don't know what it is worth, but it wouldn't be valuable to me.

Mr. Bronson: Move to strike out the answer as not responsive.

Q. Why not?

Mr. Bronson: Objected to upon the ground that it calls for a conclusion of the witness incompetent testimony, hearsay evidence.

1880 Q. Well, it is low and wet generally. A good dry season you could break it and work it, but a wet season you couldn't do anything with it since I have known it.

Cross-examination.

By Mr. Bronson:

Q. How wide a strip is this from Fairmount down to Blackmer that you are talking about?

A. It is a strip east of the road. Let me see. There is section 20 in there, and then on the other side—what section is north of 20?

Q. Seventeen?

A. Well, seventeen there, it is a little over a mile in there.

Q. Section sixteen is north of Blackmer?

A. Yes, a mile north.

Q. That low?

A. Yes, sir.

Q. Some good land in there though?

A. Well, there is a little in Section 16, there is a little raise there. That was a school section. They used to cut it for hay always.

Q. Now the section right north of that, is that pretty good land, goes right down to the Bois de Sioux river, Section 9?

A. North of 16?

Q. Yes.

A. Low and wet.

Q. Any cultivated?

A. Well, I had some broke there for a fellow down home one year, but after it was broke they couldn't cultivate it.

Q. How much was broke in 1914?

1881 A. Well, what is that, the Caruther's land there. My son-in-law has a quarter up in that section north of sixteen. I had charge of it, and I tried to break it in 1894, and there was a ditch from the west brought so much water down that it flooded it all out and we couldn't break it. If that is the Caruther's land, the land my son-in-law owns.

Q. You know the Riddel land?

A. Well, where is that, north of that or east of that?

Q. In Section 9?

A. Well, I know all that land in there, but I don't know who owns it or what it is called.

Q. Do you know the Broderick land?

A. Yes, sir, my brother-in-law has got a farm right east of that. Well he has got some north of it. That Broderick land is up in half a mile south and a half a mile east of—there was a big farm there a Jew in Wahpeton used to own——

Q. I asked if you knew the Broderick land?

A. I would have to know where it laid first.

Q. You know some of this land in Section 4, right north of Section 9?

A. Is that south of Fairmount?

Q. Yes, sir, two miles south of Fairmount?

A. Yes, I know that land is there. Was that the assessor's there?

Q. Look at this map here. Go two miles south of Fairmount and then easterly and you strike section 4. Is that good land or poor land?

A. Well, I know all this land from this road to the river, but I don't know who owns it. There is one quarter of good land on this east side of the road from White Rock to Fairmount. There is one quarter there that the assessor that was here—I seen him on the stand—Kurtz, he owns that one quarter there. Schouweiler used to own it. In 1897 that was the only land that was put in there. That is a good quarter.

1882 Q. Was this land a mile south in Section 33-130-47 put in in 1897?

A. There is a Bohemian had some in there close to this land this assessor owned. He had some in there in 1897.

Q. Did Mr. Pinkney have his land in along the river in 1897?

A. There was *know* another land along there that I know of only them two pieces east of that Blackmer road.

Q. You know Charles R. Pinkney?

A. No sir, I don't.

Q. Lives on the east part of Section 28 and west part of Section 27. Was that land in in 1897 in crop—what is now the Pinkney land?

A. I can't tell, but I say there was two quarters on the east side of the Blackmer and Fairmount road that was in. There was just two pieces in in 1897, but over in here west of the railroad, this Taylor land, and that land west was all put in.

Q. Now this land north of Fairmount?

A. I ain't much acquainted with that. I drove over it lots of times.

Q. Now this flood of 1897 came in the spring?

A. Yes sir.

Q. When the snow went off?

A. Yes sir.

Q. They had a very excessive fall of snow in the winter of 1896?

A. Well, about four feet of snow nearly.

Q. Pretty near on the level?

A. Yes sir—pretty near that when I went up there in March.

Q. And the spring break-up started to come along in March?

A. Yes sir.

1883 Q. And when were the waters highest in the spring of 1897?

A. Well, after that snow melted, sometime the last of March or the first of April the water was highest, and then it stayed all summer.

Q. Stayed high all summer?

A. No, it went down, but there was water all summer until in October.

Q. And there was water in these sloughs around Blackmer?

A. Well, I know I wanted to get some plowing done in the fall of 1897 and the water went down enough so I could get it done.

Q. The high flood stage of the year 1897 lasted about how long?

A. Lasted all summer, but went down all the time, understand, but it went slow.

Q. And these lands that were north of Blackmer, didn't the high water recede within two weeks after the high water stage in 1897?

A. Yes, but along the White Rock flats and from there up as far as Blackmer all that river land up there had a good deal of water all summer. It went away kind of gradually but there was lots of water in the fall.

Q. Now you didn't see the conditions of flood in 1915 except in the month of June, 1915?

A. I was up there in June, 1915, and the heavy rains just commenced.

Q. Now what shape were the crops being put in along in this territory in 1915?

A. They got the crops in pretty good.

Q. That is in this same territory we are talking about?

1884 A. Well, there was some crops put in there on a good deal of the flat in 1915.

Q. That is in this territory you have described south of Blackmer?

A. In the wet territory, but it all flowed over afterwards and it was wet all summer.

Q. Now my question was whether or not the crops were pretty well put in along in this section in June, 1915, as you observed it?

A. The crops was pretty well. They put in part of the flats in 1915.

Q. Now we have a territory we have been talking about here that extends from the south line of the state of North Dakota up beyond Fairmount west of the Bois des Sioux river, down by White Rock about two miles wide and up above White Rock about a mile wide that is adjacent to the Bois des Sioux river. Now we are talking about that territory mind you, and on that territory I am asking you as to what extent it was put in crop in the year 1915, just generally speaking?

A. I think it was in pretty good condition that spring of 1915.

Q. And pretty well put in crop?

A. I think it was. I went up to Fairmount on the Soo, and I think in 1915 it was pretty well—the crops—they had in a good average crop there.

Q. Now you left sometime in June, 1915?

A. I wasn't there only a couple days.

Q. And it was just then starting to rain some?

A. Yes sir, it rained.

Q. And you didn't get back to White Rock, or in this territory until the month of October, 1915?

A. No sir.

1885 Q. Consequently you don't know personally of any of the high water conditions between June, 1915, when you were there, and the time you came in October, 1915?

A. No, I don't know anything about that only what they told me.

Q. When you came back there in October, 1915, you found conditions wet?

A. Yes sir.

Q. And found the land in this vicinity overflowed?

A. Yes sir.

Q. Did you find the crops drowned out?

A. Oh yes.

Q. To a considerable extent?

A. Yes sir.

Q. Now you have discussed some of these lands over in Traverse county and it appears, Mr. Houston, that you have owned a considerable number of acres in Traverse county?

A. Yes sir.

Q. But not any in Clifton or Redpath townships?

A. No.

Q. Why didn't you get some in Clifton and Redpath townships?

A. Well, because I never happened—the farmers never offered it to me for sale, and of course the land I bought I always bought cheap; somebody would come and offer to sell to me, but they never offered me any over there.

Q. How were the lands in Windsor and Walls and Folsom town-

ships with respect to drainage as compared to the lands in Redpath and Clifton townships?

A. The land in Walls and Windsor was a good deal better drained, the northern part of it.

Q. And by reason of that more valuable?

A. No, I could buy land there because it was offered to me
1886 cheap, and I don't know as it was any more valuable than the lands up in Redpath along the Mustinka river and along there which they asked more for.

Q. That is at the present time?

A. I don't know anything about the present, but in the early days when I bought land.

Q. In comparing the lands in Clifton and Redpath township you said they compared on an average as far as crops were concerned with Croke and Dollymount?

A. Yes sir.

Q. But didn't compare quite as favorably with crops in Windsor or Folsom?

A. No, they didn't.

Q. Why didn't they?

A. Well, I don't know why. They didn't only some years. One year I was there I remember it was better. In 1894 they had a good deal better crop than in Walls or Windsor.

Q. Have you observed in the years you were there some years in Redpath and Clifton crops would suffer on account of seasonal wet conditions?

A. They would in the spring flood if there was much snow. They couldn't get in their crops as early as they could in Windsor.

Q. And sometimes would the lands in these townships suffer from floods during harvest time?

A. Well, there was two years or so the lands suffered from floods in harvest time. I think it was in 1899 and 1900, but I know I couldn't cut all my grain even in Walls. I had some grain in Lake valley that I couldn't cut.

Q. Some in Croke and some in Logan?

A. No, I didn't have any in Croke I couldn't cut.

Q. Lands a little higher in Croke?

A. No, they ain't so high but it happened to be drained
1887 by two good ravines. They kind of drained it so we could cut it.

Q. Where do you live now, did you say?

A. River Falls, Wisconsin.

Q. How old are you?

A. Sixty-nine.

Q. Are you related to Charles E. Houston, attorney for the State of Minnesota?

A. Yes sir, he is my son.

(Adjournment taken until 10 a. m., October 29, 1917, or such other time as shall be mutually agreed upon by all parties.)

October 29, 1917, at 2 p. m.

At 10 o'clock a. m. of this day Commissioner Wallace B. Douglas at the request of the parties adjourned the matter until 2 p. m. at which the same appearances were made as heretofore and the following proceedings were had:

JOHN L. LARSON, sworn in behalf of the defendant, testified as follows:

Examined by Mr. Palmer:

Q. How old are you?
A. 64.
Q. Where do you live?
A. In Traverse county Minnesota.
Q. How long have you lived in Traverse county, Minnesota?
A. 27 years.
Q. What is your occupation?
A. Farmer.
Q. How long have you been a farmer?
1888 A. My whole life I have been farming.
Q. Where in Traverse county do you live?
A. In Lake Valley township, West Lake Valley.
Q. Are there two parts to Lake Valley township, East Lake Valley township and West Lake Valley township?
A. Yes.
Q. Which part of West Lake Valley do you live?
A. Northwest part.
Q. It is West Lake Valley, is it, that lies adjacent to Traverse Lake?
A. Yes.
Q. On what section of West Lake Valley do you live?
A. Section 3.
Q. What part of Section 3?
A. Northwest quarter.
Q. It appears from the map to be divided into governmental lots, that quarter section?
A. Yes sir.
Q. You live on what would be the northwest governmental subdivision of Section 3?
A. Yes.
Q. That is Township 127, of Range 47, Mr. Larson?
A. Yes.
Q. How large a farm have you there?
A. I have 138.80 acres in that township.
Q. And you own some more land adjoining?
A. Yes, sir.
Q. In what township?
A. Town of Monson.
Q. That would be West Monson?

A. West Monson.

Q. Lying next to the lake?

1889 A. Yes sir.

Q. In what section is your land in that township?

A. In 34.

Q. What part of the section would it be?

A. It would be southwest quarter of Section 34.

Q. Town of West Monson?

A. Yes, sir.

Q. Which would be Township 128, Range 47?

A. Yes, sir.

Q. How many acres have you there in Monson township?

A. 126½ acres.

Q. Does that also adjoin Lake Traverse on the west?

A. Yes.

Q. What forms the west boundary of both of these tracts of land of yours?

A. The lake shore.

Q. That is, the eastern shore of Traverse Lake?

A. Yes, sir.

Q. Besides the land that you have described, do you have some riparian land westerly of that in the lake?

A. Yes.

Q. This riparian land does not form a part of the land you have described?

A. No.

Q. But is appurtenant to it on the west?

A. Yes.

Q. On which of these tracts do you make your home?

A. The home is on Section 3, northwest quarter of Section 3.

Q. How long have you lived upon that land and made it your home?

A. 27 years.

1890 Q. Are you living there at this time?

A. Yes.

Q. And continuously for the past 27 years have you farmed and operated that land?

A. Yes.

Q. How did you acquire that land?

A. I take it on a homestead.

Q. From the government?

A. Yes, sir.

Q. And when did you acquire this land in Section 34 in West Monson?

A. I bought that 17 years.

Q. That would be 1900?

A. Yes.

Q. Have you farmed and operated that land ever since you bought it?

A. Yes.

Q. Going back now to your home farm, Mr. Larson, how far is your house from the lake shore?

A. About 15 rods.
Q. What direction?
A. From the lake?
Q. Yes.
A. East.
Q. About 15 rods east of the lake is your house?
A. Yes, sir.
Q. And your other buildings are right there too, farm buildings?
A. Yes, sir.
Q. And have you lived continuously these 27 years right there within 15 rods of the east shore of the lake?
A. Yes, sir.
1891 Q. Which part of Traverse Lake is that you live adjacent to?
A. That is, they call it Mud Lake.
Q. How far are you from the Interstate, what is called the Interstate bridge or Interstate crossing down at the narrows?
A. That is, I think, seven miles.
Q. What directions are you from that?
A. I am northeast from that.
Q. Somewhere about seven miles?
A. Yes, sir.
Q. And how far are you from where the lake flows out forming the Bois de Sioux river?
A. I think it is only a few miles.
Q. What direction?
A. I live south from that point.
Q. And how far are you from White Rock?
A. Six miles.
Q. What year did you move upon this land of yours?
A. In 1890.
Q. All the time you have made your home there upon the lake shore have you observed the lake from time to time?
A. Yes.
Q. How frequently do you see it?
A. I see it at all times.
Q. You are right in plain sight of it, your house is?
A. Yes, sir.
Q. In the year 1890 when you moved there, what was the stage of the water in Traverse Lake and particularly in this Mud Lake on which you live?
A. It was little—it wasn't very much in there at that time.
Q. Was Mud Lake dry that year?
1892 A. Pretty near.
Q. And the big lake proper to the south of you, was that dry?
A. He wasn't dry, he was low, I guess.
Q. On this home farm of yours do you use any of this riparian land that lies appurtenant to your land on the west?
A. No, not very much.
Q. Some years you can use some of it, can your, Mr. Larson?

A. Yes, some years I can use some of it.

Q. What is the largest amount that you make use of there, this riparian land?

A. Between my house and a little south of my house just to the line, line to Mr. Johnson there.

Q. Line to Mr. Johnson?

A. Yes.

Q. About how large a tract is the most you ever used, how many acres?

A. Two to three; I haven't measured it but there is a little corner there.

Q. What do you use it for?

A. For cutting hay.

Q. And is that the most you ever used, three acres?

A. Yes.

Q. I take it you never made very accurate measurement of it?

A. No, I haven't, but I judge it would be around that.

Q. And that is in dry years?

A. Yes.

Q. And in wet years what about it?

A. In wet years I have nothing.

1893 Q. You have nothing, no use of that riparian land?

A. No.

Q. This year 1890 that you came there, did you use some of that land?

A. I used some of it, a little.

Q. Take the next year, 1891; what was the stage of water in that part of Traverse Lake?

A. It was just the same; of course, it was a little dryer than it was in 1890.

Q. You used some of this riparian land this year, 1891?

A. Yes, a little; I cut some little hay there.

Q. The next year, 1892?

A. It was all dry.

Q. What do you mean by saying it was all dry?

A. All the lake, all the slough was dry then.

Q. The whole of Mud Lake, you mean, was dry?

A. Yes, sir.

Q. And you know the little lake northwest of your place that is called Clubhouse Lake?

A. Yes, sir, I know him; I don't think he was dry.

Q. In 1892 you don't think that was quite dry?

A. I don't think so but I don't see him.

Q. But Mud Lake was entirely dry?

A. Yes, sir, drive over there with teams in 1892.

Q. Drove right across this Mud Lake?

A. Yes, sir, all over.

Q. In 1892?

A. Yes, sir.

Q. Was that the year that the reservation was opened over there further west in Dakota?

A. Yes, sir.

Q. And in going to the reservation did they drive right
1894 across this Mud Lake?

A. Yes, sir, all over, four or five miles south of my place.

Q. When that land is dry in there, Mr. Larson, what is its character, is it spongy and swampy or is it hard rock?

A. It is swampy and of course, if it is all dry, you can drive over it but there wouldn't grow anything there.

Q. How is it as to rock?

A. It is rocky.

Q. When it is dry can you see a great many rocks in it?

A. Oh, yes; there is a pile of rocks all over there.

Q. If it remained dry could it be plowed up and cultivated?

A. I don't know.

Q. Is there anything there to make it hard to plow it up and cultivate it?

A. Yes, sir, but there is so much stones, it would be hard to take them away.

Q. It would have to be cleared of the rock?

A. Yes, sir.

Q. And what is the nature of those rocks, are they hard rocks?

A. Yes, sir.

Q. Niggerheads?

A. No; it is big ones, some of them, anyway.

Mr. Bronson:

Q. What is this territory you are talking about, Minnesota or South Dakota?

Mr. Palmer:

Q. I am asking you, Mr. Larson, particularly about this bed of Mud Lake when it was dry.

A. Yes. It is on the line.

Q. It would be practically all in South Dakota. I am asking you about the bottom of this Mud Lake when it was dry so you
1895 could see it?

A. Yes.

Q. And that is what you are describing?

A. Yes, sir.

Q. You say it is very rocky?

A. Yes, sir.

Q. Large boulders?

A. Yes, sir, all kinds.

Q. Could they be easily moved?

A. No; oh, some of them.

Q. In this Mud Lake and west from your place are there some patches of high ground, sort of islands?

A. Yes, there is some islands there, small islands.

Q. Patches of land coming up out of the water?

A. Yes.

Q. And the water in and around it?
A. Yes, sir.
Q. Do people live on those higher parts of land in there?
A. Yes, they live there all right.
Q. How many people live in there?
A. There is two families there.
Q. Were they there in 1890 when you came there?
A. No, sir.
Q. Was anybody in there?
A. No, sir.
Q. Was anybody there in 1891 and 1892?
A. One came in 1892, one of them.
Q. One of them came in 1892?
A. Yes, sir.
Q. And where did he settle, what direction from your
1896 house?
A. Southwest.
Q. About how far from your place?
A. Oh, about two miles.
Q. How large a piece of land did he settle on there?
A. I don't know that.

Mr. Bronson:

Q. Is this in South Dakota?
A. Yes, that is in South Dakota.

Mr. Palmer:

Q. What was the name of this settler?
A. His name was Andrew Swan, the first settler there.
Q. Did he build some buildings over there on this island?
A. Yes, he had some shacks there.
Q. Are those buildings still there?
A. Yes.
Q. As he built them?
A. Yes.
Q. You say he has gone away, this Andrew Swan?
A. Yes, sir, he had gone away from there now.
Q. And who moved on there after he left?
A. His name is Andrew Skifstrom.
Q. Is Skifstrom living there yet?
A. Yes, sir.
Q. And who was the next settler in there?
A. His name was Gabriel Schroeder.
Q. Which direction from your place did he settle?
A. West.
Q. Nearly west?
A. Yes, sir.
Q. How far?
A. Oh, I think a little over a mile; yes, a little over a mile.
1897 Q. Is he there yet?

A. Yes, sir.
Q. And has some land there?
A. Yes, sir.
Q. He has some land and a good deal of water, has he?
A. Yes, sir.
Q. Are those the only settlers you can think of near your place to the west?
A. Yes, sir, that is all.
Q. What year did Schroeder come in there, can you remember, Mr. Larson?
A. I think it was around 1900.
Q. Going back to this year 1892, you say was a very dry year and the year that the reservation was opened and that they traveled across there that year; what will you say of the next year, 1893?
A. It was dry.
Q. Was Mud Lake all dry that last year?
A. Yes, sir.
Q. How much of this riparian land of yours did you use?
A. I used a little more, I guess, but there wasn't very much, though.
Q. About how many acres?
A. There wasn't over five acres, I used.
Q. That was in 1893?
A. Yes, sir.
Q. Did they drive across Mud Lake that year too?
A. Yes.
Q. Wad Mud Lake entirely dry that year, 1893?
A. Yes, I think so. Well, I don't know, there was a little water but there wasn't much though.
Q. In 1894 how was it?
1898 A. It was a little water in there, a little.
Q. Some water in Mud Lake that year?
A. Yes.
Q. Did you observe in 1893 about this Clubhouse Lake, north and west of you?
A. No, I don't know anything about that. I never be there so I can't say nothing about that lake.
Q. And in 1894 you say Mud Lake had some water in it?
A. Yes, a little.
Q. How was it in 1895?
A. There was more water in it, higher up a little.
Q. Began to fill up?
A. Yes, sir, a little.
Q. Did you use any of this riparian land of yours that year, 1895?
A. Yes, sir, I used a little of it.
Q. How was it in 1896?
A. It was a little higher water again, higher than it was in 1895.
Q. Was Mud Lake pretty well filled up in 1896?
A. Oh, no.
Q. Did you use some of this riparian land of yours that year?
A. Oh, yes.

Q. How was it in 1897?
A. There was high water then, it was high up all over.
Q. What time of the year did it begin to get high?
A. It was in last of March, I guess, started.
Q. It started the last of March?
A. Yes.
Q. And began to fill up, you say?
A. Yes, sir.
1899 Q. Well, say, along in April how was it?
A. There was in the last of—I think it was high pretty near the last of April.
Q. The highest the last of April, you think?
A. No, it was not the highest. It was a little lower in the last of April than there was in around 5th and 10th of April, there was the highest.
Q. Along the 5th and 10th of April, you mean?
A. Yes.
Q. Was Mud Lake filled up with water at that time?
A. Oh, yes, he was filled up and more than that too.
Q. How was that whole area in Mud Lake to the west of you there?
A. It was all water, all water except them—there was a little up on them islands.
Q. There was a little of those islands bare?
A. Yes, sir.
Q. About how many acres in the place where this man Swan was settled?
A. I can't say how many acres there was there; there was pretty much up there but the other island he was pretty near covered.
Q. That was the one where Shroeder afterwards settled?
A. Yes, sir.
Q. That was the one a little to the northwest of you?
A. Yes, sir.
Q. That you say was pretty nearly all covered?
A. Yes, sir.
Q. About how much of it was sticking out of the water?
A. Around two acres.
Q. And ordinarily how much was there there in that island, how much land?
A. On the other island?
1900 Q. No, on this Schroeder island.
A. How much there was up?
Q. Ordinary years how many acres were there in that island?
A. I don't know, I can't tell that exactly; there is much land there. Oh, there is forty acres, I guess.
Q. It runs clear on up to White Rock, does it, as dry land, in ordinary years?
A. Yes, sir.
Q. Take this island where Andrew Swan lived over to the south and west of you—Swan lived there then, in 1897?
A. Yes.

Q. How was his place this year of 1897?
A. It was poor. Of course, there was a little more up there than there was on the other island?
Q. How many acres did he have out of water, do you think?
A. I don't know that, I can't tell that exactly; it is far away from my place.
Q. Can you make some sort of estimate of it?
A. I think he have up fifty acres but I can't estimate that very exactly.
Q. All we wanted was a general idea about it, Mr. Larson. Did you go over to Swan's place during the season?
A. No, I wasn't over there to Swan's place but I was over to Schroeder's place so I see that.
Q. That is, the place that afterwards became Schroeder's place?
A. Yes.
Q. Did the water come up to the buildings of this man Swan?
A. No, he don't come up to the buildings.
1901 Q. Have you anything there on your farm by which you can judge more accurately of the state of the waters?
A. I have on stones there, I can estimate pretty near. I can't say it on the inch, but I can estimate pretty near.
Q. How many stones have you there to say that?
A. There is many stones there, big ones, but there is only one I used to estimate it on.
Q. One in particular?
A. Yes, sir.
Q. That you observed the heights of the water on?
A. Yes.
Q. Where is that stone, Mr. Larson?
A. He is fifteen rods from my house on the lake side.
Q. Which direction from your house?
A. It is west and a little southwest.
Q. How large is this stone?
A. Oh, he is big.
Q. How big above the ground, how high does it stand up?
A. Just on the ground he is six or eight feet.
Q. Six or eight feet around?
A. No, across it.
Q. Six or eight feet in diameter?
A. Yes, sir.
Q. How high does it stand up out of the ground?
A. About three feet.
Q. Is it a rounding or a dome-shaped top?
A. Yes.
Q. Or does it run up shelving like?
A. He has a peak; he is pretty square on one side but he has a peak.
Q. It runs up sort of shelving then, is that what you mean?
1902 A. Yes, sir.
Q. And the highest part, you think, is about three feet above the ground?

A. Yes, sir.
Q. Do you know how deep it is in the ground?
A. No, I never dig that.
Q. It is evidently a big rock?
A. Yes, sir.
Q. Has that rock ever been moved, Mr. Larson?
A. No, sir.
Q. Does the action of the water affect it, heave it or move it?
A. No.
Q. You are sure about that?
A. Yes, sir.
Q. Take the ordinary years like 1895 and 1896, how near did the water come to this rock?
A. Oh, in 1896, of course, it was just to the stone, I think; oh, just to the stone.
Q. But didn't go up on the stone?
A. No, it didn't.
Q. In 1897, how was it?
A. It go over the stone.
Q. It went over the highest peak of this stone?
A. Yes.
Q. How deep was it over the top of the stone, the highest part of the stone?
A. I can't judge of it. You see, the stone was so long in the water and I wasn't to him, so of course it was some inches, two or three inches, I guess.
1903 Q. That is, the rock was entirely submerged?
A. Yes, sir.
Q. And you think it was two or three inches over the top?
A. Yes, sir, I think so.
Q. How was the water as to coming up on your plowed land, on your farm there?
A. Well, it come up on my plowed land there that year.
Q. It did?
A. Yes, sir.
Q. How much, Mr. Larson?
A. I can't say exactly how much, how deep it was but it covered much of my plowing.
Q. How long did the water stay up at this high stage of several inches over this stone and up on your plowed land?
A. Fifteen days, I think, or so.
Q. And how much did it go down then?
A. It go down pretty quick.
Q. How far down?
A. It wasn't so very much get down—I know it was high in May.
Q. How was it in June?
A. Oh, there was a little lower than it was in May.
Q. Did it get down in June as low as usual?
A. Oh, no. Of course, it get down—well, it didn't get down so very much in June, but in July and August it go down.

Q. But how long was it before it got down to where it ordinarily was, ordinary seasons?
A. How long it was, before it get down?
Q. Yes.
A. Oh, it was, I don't know, I can't remember that exactly.
1904 Q. Well, just give it generally, what is your recollection about it?
A. Well, I think it was two or three weeks.
Q. Later, two or three weeks from when?
A. That it started to get down, you mean?
Q. I guess you didn't understand me, Mr. Larson. What I want to know is whether the water went down there in the spring again to its usual level or whether the higher water stayed up there all summer.
A. Oh, well, I think it was in July, I think.
Q. You think it was still high there in July?
A. Oh, yes; there was still high in July.
Q. Was it still up on the rock in July?
A. No, I think it get up to it but I don't think it get up on the stone.
Q. You think it fell so it was around the bottom of the rock in July?
A. Yes, sir.
Q. In August you say it went down some more?
A. Yes, sir.
Q. And in September still more, would you say?
A. Yes, sir.
Q. And how long was it before it got back, the water got back to where it was ordinarily?
A. Well, I think that was in September.
Q. In September?
A. Yes, sir.
Q. Now, to the north of you there there is some cultivated land along the lake shore, is there?
A. Yes, I have a mile cultivated land.
Q. Did you cultivate that in 1897?
A. Yes, sir.
Q. When did you put it in?
1905 A. I haven't more than one quarter in 1897.
Q. You didn't have more than one quarter of it in, in 1897, why?
A. I had that cultivated but I couldn't seed in on that lake side.
Q. Why?
A. For that water.
Q. Mr. Larson, can you tell us something about the way they got around there that season of 1897, could they get across down at this Interstate crossing?
A. No, not in spring, no, sir.
Q. Why not?
A. There was too much water there. They couldn't come over on

the reservation bridge and they couldn't come over in White Rock either.

Q. They couldn't come over down at the reservation or on Interstate bridge, as I call it; that is what we call the reservation bridge down there at the narrows?

A. Yes, sir.

Q. Southwest of you?

A. Yes, sir.

Q. And you say they couldn't use that?

A. No, sir.

Q. That spring; nor they couldn't get across at White Rock?

A. No, sir.

Q. Why not?

A. There was too much water.

Q. Didn't they use the grade across there at White Rock?

A. No, sir, not at that time.

Q. How did they travel across there, Mr. Larson?

1906 A. We take some of them over on the boat, what they called it.

Q. What kind of a boat was it?

A. It was made 14x18.

Q. Of what kind of timber?

A. It was plank, you see; plank I think, was 2x10.

Q. What was it, a raft, a flat raft?

A. Yes.

Q. 14x18?

A. Yes, sir.

Q. Who made that?

A. There was a carpenter made it there, his name was Paul.

Q. Did you help make it?

A. No, Andrew Johnson, he did. He had some plank home and he had some lumber home and he made it there.

Q. That is, it was made at Andrew Johnson's place?

A. Yes, sir.

Q. Who is Andrew Johnson, your neighbor?

A. Yes, sir.

Q. In which direction?

A. South.

Q. Your neighbor on the south?

A. Yes, sir.

Q. The raft was made at his place?

A. Yes, sir.

Q. And you say you took some people back and forth on that?

A. Yes, sir.

Q. Across the lake?

A. Yes, sir.

Q. Did you take anything besides people across there?

1907 A. Oh, yes, we take some horses and wagons and machinery.

Q. Where did you take those to?

A. Take them to the reservation on the other side.

Q. Whom did you take those over for?
A. They couldn't get over.
Q. Whom were you taking them for, somebody hire you to do that?
A. Yes, sure.
Q. Did you make any of those trips with horses and machinery and stuff, yourself?
A. Yes, sir.
Q. Did you have any trouble in operating the raft?
A. I haven't any trouble but they have trouble, one time they tip the raft and put the horses into the water.
Q. They tipped the raft over and they lost the horses off into the water?
A. Yes, sir.
Q. Did you see them?
A. Yes, sir.
Q. How deep was the water?
A. It was deep, I don't know how deep it was. They tipped—oh, it wasn't so deep when they come a little ways but it was deep. I think four or five feet deep where they tipped it.
Q. Did they get the horses out?
A. Yes, sir.
Q. Where did they put them?
A. The horses go themselves and go up to that little island.
Q. Which island was that, the Schroeder island?
A. The Schroeder island.
Q. What afterwards became the Schroeder place; they got the horses up there on the island?
1908 A. Yes, sir, I think they have them there for fourteen days.
Q. They had them on the island for fourteen days?
A. Yes, sir.
Q. What did they feed them?
A. They took some fed there to feed them from the other side on the boat.
Q. Did they have any hay for them there?
A. Yes,—no, they haven't any there; they take it from the other side on the boat.
Q. Did you go down to Wheaton that spring?
A. Yes, sir, I was to Wheaton.
Q. Did you see this Mustinka river?
A. Oh, yes.
Q. What point with reference to the railroad bridge did you see it?
A. I saw it there on the railroad bridge.
Q. By the railroad bridge?
A. Yes, sir.
Q. How wide was it?
A. It was wide there, I think it was a mile, anyway, after the road we go anyway.
Q. Land that was submerged or overflowed by this water in 1897, did the water go down soon enough so they could cultivate it and use it?

A. No, not all of it.
Q. Any of it?
A. Oh, some of it, I guess they cultivated.
Q. I mean, down in the lake?
A. Oh, on the lake; I mean on the river.
Q. I mean on the lake.
A. Oh, well, on the lake there wasn't any on the lake side, I couldn't cultivate it.
Q. Did the others cultivate it, that that was on the lake side?
A. No, sir, this that they had was close as I did, they don't cultivate it.
Q. Take the next year, 1898, how was the water?
A. It was a little lower then.
Q. Was it still higher than usual in 1898?
A. No, it wasn't so high but there was a little over regular.
Q. That is what I mean, a little over the ordinary?
A. Yes, sir.
Q. I didn't ask you to say whether or not it was as high as it was in 1897, but I was asking you whether it was higher than the ordinary?
A. Sure.
Q. And in 1899?
A. It was lower then, a little lower.
Q. Was it still higher than the ordinary?
A. No, I don't think so.
Q. In 1900?
A. A little lower then again.
Q. In 1901?
A. Well, it was lower.
Q. Pretty dry year, was that?
A. Oh, yes.
Q. In 1902?
A. Oh, that was a dry year too.
Q. In 1903?
A. Well, that wasn't high then, either.
Q. How was it in 1904?
A. Well, it was dry.
Q. In 1905?
A. There was a little higher, I think.
Q. Began to come up again?
A. Oh, in 1905, that was dry.
Q. 1906?
A. Just the same.
Q. Do you remember about 1907, whether — was considerable water in it?
A. I think it was a little more then.
Q. You think it was higher then?
A. Yes, I think it was.
Q. Was it as high as it was in 1897?
A. No, no.

Q. But it was a little higher than the ordinary?
A. Yes, it was.
Q. In 1908 how was it?
A. I think it get down a little again.
Q. In 1909?
A. Just the same.
Q. About the average at that time?
A. Yes, sir.
Q. In 1910?
A. Just the same too, I guess.
Q. 1911?
A. That is the same.
Q. Those were ordinary years along in there?
A. Yes, sir.
Q. In 1912?
A. It was just the same.
Q. And 1913?
A. Just the same, too.
Q. Ran along about the same?
A. Yes, sir, right along.
1911 Q. 1914, how was it?
A. That was a litle higher then.
Q. What part of the season did it begin to get high in 1914?
A. I think it was in June, I think.
Q. Along in June it began to fill up in 1914?
A. Yes.
Q. Did the water come up to the rock that year?
A. No.
Q. And in fall of 1914 how was it?
A. Oh, it was high then in fall.
Q. Higher than ordinary?
A. Yes, sir.
Q. 1915 how was it?
A. It was higher then, it was much higher.
Q. It was much higher than ordinary?
A. Yes, sir.
Q. And about what part of 1915 did it begin to get high?
A. It was in June, May and June, I guess it was.
Q. July?
A. June and July high up.
Q. Did it come up to the rock that year?
A. Yes, pretty near; yes, it come up to the rock.
Q. It did?
A. Yes.
Q. Did it come up on the rock much?
A. No, not much.
Q. How much do you think?
A. Well, there wasn't more than an inch or so.
Q. An inch or so on the rock?
A. Yes.

1912 Q. What were the conditions as to rainfall there in 1914 through the season, do you remember?
A. It was raining all the time.
Q. And in 1915?
A. It was raining, more raining.
Q. More than 1914?
A. Yes.
Q. A good deal of rain?
A. Yes.
Q. *What* there be spaces of good weather in between, dry weather at all?
A. No, it was raining all the time.
Q. Did it stay up there pretty well during 1915?
A. Yes.
Q. How was it in 1916?
A. There was some raining again, more rain.
Q. Still more in 1915?
A. Yes, sir.
Q. Did the water come up to the rock that year?
A. Sure, high.
Q. It did?
A. Yes, sir.
Q. What time of the year did it come up?
A. It was in June and July.
Q. How far up on the rock did it come?
A. Oh, it come, I think it come two feet, a little over two feet.
Q. What do you mean by two feet, on the rock two feet?
A. Yes.
Q. Came to within about a foot of the top?
A. Yes, sir.
1913 Q. You say the rock was three feet high?
A. Yes, sir.
Q. And you think the water came two feet on the rock?
A. Yes, sir, more than that. I think it wasn't more than four or five inches left of the rock.
Q. You mean that it left four or five inches of the rock sticking up out of the water?
A. Yes, sir.
Q. And that was all?
A. Yes, sir.
Q. Is that as high as it got in 1916?
A. Yes, sir, that was the highest we had.
Q. Did it at any time get over the rock?
A. In 1897 it got over the rock.
Q. But in 1916 did it get over the rock?
A. No.
Q. And it didn't get any higher than this four or five inches from the top, you say?
A. No, it wouldn't.
Q. How was it as to coming up on the plowed land in 1916?
A. Oh, it didn't come up on the plowed land. It did not.

Q. Was there as much water or was the water as high in 1916 as it was in 1897?
A. No.
Q. How was it as to staying up through the summer of 1916?
A. Oh, it stayed up a long time.
Q. Did it stay up any longer than it did in 1897?
A. I think so, it stayed up longer. It wasn't so high in 1897 in the fall than it was in 1916 in the fall.
1914 Q. Why?
A. Well, there wasn't so much raining.
Q. In 1897 you mean?
A. No.
Q. That is, as I understand you, it wasn't as high in the fall of 1897 as it was in the fall of 1916?
A. No.
Q. And there wasn't as much rain in 1897 through the summer as there was in 1916?
A. No.
Q. That is the way you remember it, is it?
A. Yes, sir.
Q. Now, take those three years, 1914, 1915 and 1916, how was the rainfall as compared with other years you have ever known there?
A. It was raining, I never saw such raining before since I come up here as there was in those three years except 1916.
Q. As there was in 1916, 1915 and 1916?
A. No.
Q. How was it this last spring, 1917, Mr. Larson, did the water come up to the rock?
A. It come up to the rock but it don't get over. It come a little on the rock.
Q. Came up a little on the rock this spring, 1917?
A. Yes.
Q. How much do you think?
A. Oh, I think it was six inches.
Q. About six inches?
A. Yes, sir.
Q. Did it come up on the plowed land at all?
A. No.
Q. And when it came up this last spring about six inches
1915 on the rock, did it go down again right away?
A. Yes, sir. Of course, it didn't go down right away but it get down pretty quick this year.
Q. As quick as usual? Did it get down as quick as usual this year as the ordinary?
A. Yes, sir, there was not any raining.
Q. There wasn't much rain, this summer?
A. No, sir.
Q. How far is the water away from this rock now?
A. It is far away now, it is three or four rods.
Q. Mr. Larson, you say you have observed the lake there from

time to time and the stage of water in it. Do you remember when this Mustinka ditch was made in 1913, along in there?

A. Yes, sir.

Q. When they dredged out the river?

A. Yes, sir.

Q. Have you noticed any difference in the stage of the water in the lake there since that ditch was put in then you did before?

A. No, I haven't seen no difference.

Q. You haven't noticed any difference whatever?

A. No, I haven't seen that.

Cross-examination.

By Mr. Bronson:

Q. Where is the state line, Mr. Larson, west of your farm, between Minnesota and South Dakota?

A. It goes in the middle of the lake, I think.

Q. Mud Lake?

A. Yes, sir.

Q. Mud Lake has an outlet through the Bois de Sioux river to the north?

1916

A. Yes.

Q. And this Mud Lake is a part of the Lake Traverse?

A. Yes, sure.

Q. And the Clubhouse Lake also is a part of this Lake Traverse?

A. Yes, sir, I think so.

Q. That is, when you speak of or use the term Mud Lake it speaks of one portion of Lake Traverse?

A. Yes, sir.

Q. This riparian land that you have been talking about refers to land west of Mud Lake, does it?

A. No, west of my farm, but it is not west of Mud Lake.

Q. West of your farm?

A. Yes, sir.

Q. In Minnesota or South Dakota?

A. Well, it is both, it is on both sides.

Q. Well, when you speak of this riparian land, does that refer to some land between your homestead land and the edge of the lake, the east edge of the lake?

A. Yes.

Q. It doesn't refer to land on the west side of the lake?

A. No, but it is west of my farm.

Q. Lying between your land and the east side of the lake?

A. Yes.

Q. Now, you have spoken about the height of Mud Lake for all of these years. Have you kept any record at all in writing on this thing?

A. No, I haven't kept any record.

Q. You are just——

A. I just see it.

Q. And remember it?

1917 A. Yes, sir, remember it.

Q. And have you any specific recollection on any particular one year?

A. Yes, I have on the highest year.

Q. But you haven't any specific recollection about the ordinary year, have you?

A. No, I have not.

Q. Well now, apparently you have testified to conditions of high water during the time that you have lived there on this land, in this Traverse Lake three times, 1897, 1915 and 1916?

A. Yes, sir.

Q. Those are the three high periods?

A. Yes, sir.

Q. In many of these ordinary years that you have testified to, you say Mud Lake was dry?

A. Yes, sir, he was dry.

Q. And do I understand you to say that when there is an ordinary year, an average ordinary year that Mud Lake will be dry?

A. Well, I don't know about ordinary year, but he has been dry for three years.

Q. Well, in an ordinary year, in the years that you have lived there in what you might call ordinary years, because you used the word 'ordinary' several times in your testimony——

A. Yes.

Q. —would there be some water in Mud Lake or do you refer to an ordinary year when there is not any water in Mud Lake?

A. Yes.

Q. That is, you call an ordinary year a year when there is not any water in Mud Lake some time during the year?

A. It would depend on how much rain there will come,

1918 that is the reason.

Q. In dry years Mud Lake is dry?

A. Yes.

Q. Is it dry now, Mud Lake?

A. No.

Q. And this has been a dry year?

A. Yes, it has been a dry year all right but it was filled up in the spring.

Q. Wait,—is Mud Lake dry now?

A. No, sir.

Q. And this has been a dry year?

A. Yes, sir,

Q. Have you seen any dryer year than this since you have lived there?

A. No, sir, not dryer years, not dryer summers, but now if you want to keep on dry he will be dry.

Q. Up to the present time through this year from spring on it has been a dry year?

A. Yes.

Q. And if I understand you, you haven't seen any year during the time you have lived there, any dryer?

A. I have seen one year dry but in '90 (nineties) there was many years dry.

Q. It was many years dry?

A. Yes, sir.

Q. Now, as to conditions of rainfall for the year 1917 as compared with all the other years that you have lived there, have you seen any year where you have had less rainfall than you have had in 1917?

A. No, I have not.

Q. About how much water is there in Mud Lake now?

A. I don't know that.

1919 Q. Well, about how wide is Mud Lake at your place?

A. Well, he is, of course, he isn't very wide there; he is, well, I think, is 100 rods over.

Q. About 100 rods?

A. Yes, sir, I think so.

Q. Is there water in that 100 rods now?

A. Yes, sir, a little.

Q. About how wide is the widest part of Mud Lake now?

A. Oh, he is, I think he is 160 rods.

Q. And is there water in that 160 rods now?

A. Oh, yes.

Q. And that has been there all summer?

A. Yes, sir.

Q. And in the spring there was more of it?

A. Yes, sir.

Q. And in the spring of 1917 the water was up, as you say, about six inches on the rock?

A. Yes, sir.

Q. And what time of the spring of 1917?

A. I think it was in July.

Q. 1917?

A. Yes, sir.

Q. Are you sure about that, Mr. Larson?

A. I think so, I think it was that time.

Q. You think it was in the month of July, 1917?

A. Oh, 1917? No, no, it wasn't up on the rock in 1917 in July.

Q. When was it at the highest, that is, six inches on the rock in the year 1917?

A. Oh, that was in the 1st of April.

Q. And you testified that just stayed for a short time?

A. Yes, sir.

1920 Q. That went away?

A. Yes, sir, that went away.

Q. You own, as you have testified, this northwest of 3, which has been your home since 1890?

A. Yes, sir.

Q. And the southwest of 34, which you have owned some 17 years?

A. Yes, sir.

Q. And the west side of these two pieces of land is bounded by the portion of Lake Traverse that you call Mud Lake?

A. Yes, sir.

Q. And on that west side of these two pieces of land you have some lands that you have been calling riparian lands?
A. Yes, sir.
Q. And some of these lands you use for hay?
A. Yes.
Q. Riparian lands?
A. Yes, sir.
Q. And about how wide a strip along the farms that you have mentioned is this riparian land?
A. It is a strip, some places there isn't any and on the south end there is a corner I think is around 3 acres, that is all there is on that homestead, and on the other there is a strip on the lake side I can use some times.
Q. About how many acres on a fair estimate is there altogether of this riparian land?
A. Well, I don't know how much there is. There isn't much, I think there is 5 or 6 acres altogether.
Q. In ordinary years you cut hay on that?
A. Yes, sir.
Q. And you have done it all the years that you have lived there?
1921 A. Yes, sir.
Q. On this land, excepting 1916?
A. 1916, yes, sir.
Q. You didn't cut any in 1916?
A. No, sir.
Q. Did you cut any on it in 1915?
A. No, sir, not very much, a little.
Q. Did you cut some in 1897?
A. Yes.
Q. You got on it in 1897?
A. Yes, sir.
Q. Because the water went off in the summer and you got on it all right in the fall?
A. Yes, sir
Q. In 1916 the water was highest when?
A. I think it was in June and July.
Q. And at that time the water was up within about four or 5 inches of the rock that you have been talking about, of the top of it?
A. Yes, sir.
Q. And in 1897 the water at the highest period was, as you recollect it, an inch or two above the top of the rock?
A. Yes, sir.
Q. So that would make a difference between the high stage of water in 1916 and the high stage of water in 1897 of approximately 7 inches, is that correct?
A. Yes.
Q. You might be a little mistaken, might you not, Mr. Larson, as to when the water was the highest in 1916, as to the time in 1916 when the water was the highest? You have testified, as I understand, that it was some time in June or July?
A. Yes, sir.

1922 Q. And as a matter of fact it was in April, wasn't it, 1916, that the water was the highest?
A. No.
Q. So your recollection is that it was highest in June and July?
A. Yes, sir.
Q. And was it high in April, 1916?
A. It was raining all that spring.
Q. No, that isn't my question. Was the water in Lake Traverse by your farm high in 1916?
A. It was high but I don't think it was as high as in——
Q. Was it up on the rock in 1916?
A. Yes, sir.
Q. And in May, 1916?
A. Yes, sir.
Q. And in June, 1916?
A. Yes, sir.
Q. And in July, 1916?
A. Yes, sir.
Q. And in August and September, 1916?
A. Yes, sir.
Q. So for the years that you have lived there, the water stayed high all through the summer longer than you have ever seen it before?
A. Yes.
Q. And was high in 1915?
A. Yes, it was pretty high.
Q. And when do you think it was highest in 1915?
A. Well,—oh, it was in April and May, I guess.
Q. 1915?
A. Yes, sir.
Q. So that you put the high water in 1915, the highest
1923 water in 1915, sooner than you do in 1916, as far as the month is concerned?
A. No.
Q. Maybe you don't understand my question.
A. No.
Q. If I understand your testimony correctly, the highest water that means highest water in the lake in 1915, was you think in the month of April?
A. And May.
Q. And May; and the highest water in 1916 on this same lake was in May and June?
A. Yes, sir.
Q. No, June and July; I beg your pardon.
A. Yes, sir, June and July.
Q. And it was high in April, 1915?
A. Yes, sir.
Q. And that continued in May and June?
A. Yes, sir.
Q. Because you had lots of rain?
A. Yes, sir.
Q. Continued all summer?

A. Yes, sir.
Q. Right through until the fall?
A. Yes, sir.
Q. And you had a high stage of water pretty well through the winter, didn't you?
A. Yes, sir.
Q. And then it got still higher in 1916?
A. Yes, sir.
Q. All through the year?
A. Yes, sir.
Q. And then it was high in the spring of 1917?
1924 A. Yes, sir, in the spring.
Q. And in the fall of 1914 it started to come up?
A. Yes, sir.
Q. And get higher?
A. Yes, sir.
Q. Kept getting higher?
A. Yes, sir.
Q. And stayed higher?
A. Yes, sir.
Q. In 1897, in the fall of 1897, how nearly did this Mud Lake you are talking about get down or dry?
A. Oh, he was pretty near ordinary in the fall.
Q. In the fall of 1897?
A. Yes, sir.
Q. Ordinary, you mean part of it was dried up?
A. Yes.
Q. Just like it is now, you mean?
A. No, he was higher in the fall at that time than he is now.
Q. A little higher than it is now?
A. Yes, sir.
Q. But this riparian land of yours was all dry?
A. Yes, sir, some of it.
Q. You cut hay in the fall of 1897?
A. No, it wasn't very much.
Q. About how much?
A. I think I have a load there.
Q. Pretty wet in 1915 and 1916 though on this riparian land?
A. Yes, sir.
Q. All covered with water?
A. Yes, sir.
1925 Q. How was it in the fall of 1916 as compared with the fall of 1897?
A. It was a little higher in the fall of 1916 than it was in 1897 in the fall.
Q. These lands you live on are well drained, are they not, they slope down to the lake, these lands you own?
A. Yes, sir.
Q. You have no county ditches along your farm there?
A. No, sir.
Q. They are well drained?
A. Yes, sir.

Q. Drained well into the lake?
A. Yes, sir.
Q. Good slope to the land?
A. Yes, sir.
Q. You spoke about being up to Wheaton in 1897, do you trade in Wheaton?
A. Yes, sir.
Q. That is your trading place?
A. Yes, sir.
Q. And when you go to Wheaton you drive east and then south?
A. Yes, sir.
Q. Across that bridge?
A. Yes, sir.
Q. That crosses the Mustinka river near Wheaton?
A. Yes.
Q. And you say in 1897 that you saw the Mustinka river there near Wheaton about a mile wide?
A. Yes, sir.
Q. Outside of its banks, the river was out of——
A. Yes, sir.
1926 Q. The country on both sides flooded?
A. Yes, sir.
Q. That was in the spring of the year?
A. Yes, sir, that was in the spring of the year, that was in the 1st of April, I think.
Q. Lots of water as you came along to the bridge there looking north and northeast?
A. Yes, there was water all over.
Q. And the winter of 1896 was a winter of deep snow?
A. Yes, there was snow.
Q. Lots of snow?
A. Yes, sir.
Q. Have you ever seen as much snow in the years you have lived there as in 1896?
A. No, sir.
Q. You farmed your lands that year, 1897?
A. Yes, sir.
Q. Put in crops?
A. Yes, sir.
Q. Raised crops?
A. Yes, sir.
Q. You farmed them all these years there?
A. Yes, sir.
Q. Raised crops all these years?
A. Yes, sir.
Q. There has been no year since you lived there that you couldn't raise crops on it?
A. No.
Q. I mean wheat and oats and barley and that sort of stuff?
A. Yes, sir, some years more and some years less.
Q. Some years you put in more wheat than you do other
1927 years?

A. Yes, sir.
Q. Were you at Wheaton in the spring of 1915?
A. Yes, sir.
Q. And did you see lots of water coming down the Mustinka river?
A. Oh, yes.
Q. Did you see any floods there in 1915?
A. Yes,—in 1915?
Q. Yes, and in 1916, did you see any?
A. Yes, sir.
Q. When did you see some?
A. It was in the spring.
Q. In 1916?
A. Yes, sir.
Q. Water outside of the banks of the Mustinka river?
A. Yes.
Q. Lots of water all over?
A. Yes, sir, there was water, but it wasn't so high as in 1897.
Q. When were you at Wheaton in 1916?
A. I was there many times.
Q. Right along?
A. Yes, sir, I have my trade there so I be there many times.
Q. You saw the water running in this Mustinka river?
A. Oh, yes.
Q. You know that in 1916 the Mustinka river had been dredged out, you knew that, did you?
A. Yes, sir.
Q. You saw the dredge working there?
A. Yes, sir, I saw that.
1928 Q. You noticed them working on some of the cut-offs on the Mustinka river where they cut through?
A. Yes, sir.
Q. And when you were there in the spring of 1916 you saw that channel full when you went along there?
A. Yes, sir.
Q. Outside of its banks some?
A. Yes, sir.
Q. Running full, was it?
A. Yes, sir, there was lots of water there.
Q. Did you notice the bridge at Wheaton, the water up to the bridge?
A. No, sir, I never saw that.
Q. Were you there at Wheaton at any time when the water went over the road?
A. Over the road south of the grade but it wasn't over then at that time.
Q. About how wide was the water over the road that goes across the bridge?
A. Two or three rods.
Q. Flowing over?
A. Yes, sir.

Q. Which was was it flowing?
A. South.
Q. Towards Lake Traverse?
A. Yes, sir.
Q. That is, in the general direction that this Mustinka ditch goes?
A. Yes, sure.
Q. Were you at White Rock in 1897?
A. No.
Q. Not up there at all?
1929 A. No, sir, I wasn't there for many years.
Q. I thought you testified about their not being able to get across at White Rock?
A. They said so, that was in 1897.
Q. Well, they said so; somebody told you that?
A. Yes.
Q. You didn't see that?
A. I didn't see that, no.
Q. You don't know anything about that?
A. No, sir.
Q. You live about 6 miles from White Rock, south?
A. Yes.
Q. You live north of where the Mustinka river empties into Lake Traverse?
A. Yes, sir.
Q. And when the high water comes at different times the water goes north past your place, I suppose?
A. I think so, it has to go there.
Q. That is the way you observed it, that is correct, isn't it?
A. Yes, sir.
Q. There isn't any current now in Mud Lake, is there?
A. No.
Q. It just stands there in pools?
A. Yes; oh, I think there is a little going.
Q. Have you been up to White Rock the last month or two?
A. No. It is only a mile and a half from my place it started to go away so I can see it there going a little.
Q. North?
A. Yes, sir.
Q. In 1916 and 1915, when they had this high water you have been talking about, this land west of you across Mud Lake,
1930 this Swan land or the Schroeder land that you have been talking about, were practically all flooded?
A. No, they wasn't all covered. They wasn't all covered in 1915 and 1916 but it was covered before.
Q. In 1897?
A. Yes, sir.
Q. Were they pretty wet in 1915 and 1916?
A. Sure.
Q. Were they considerably flooded?
A. Yes, sir, sure.
Q. But all of it wasn't covered?

A. No, it wasn't all covered.
Q. Was that so also in the spring of 1917? That was during this spring, 1917?
A. No, there wasn't so much then.
Q. Before 1915 and 1916 some of these lands west of you over in South Dakota, I understand, were cultivated and farmed?
A. No, wasn't any cultivated farms there.
Q. Who is this Schroeder?
A. Well, he lived there.
Q. He doesn't cultivate?
A. He hasn't done any cultivating at all.
Q. Just hay land?
A. Yes, sir.
Q. And Swan the same way?
A. Yes, sir.
Q. And what is up in Section 28, northwest of you, what is up in there, west of Mud Lake?
A. There isn't any cultivating there at all.
Q. Hay land, is it?
A. Hay land.
Q. And then you get over on the west side, you get to
1931 the reservation, go across there to the reservation?
A. Yes, sir.
Q. Some lands over there that are cultivated?
A. Yes, sir, on the reservation, cultivated.
Q. Yes, on the high land, but I mean—there is Clubhouse Lake northwest of you?
A. I don't know how they are there now, I don't know anything about that, so far away.
Q. Do you know where Diamond is?
A. Yes, sir.
Q. How far is that from your place?
A. 10 miles.
Q. Across the lake?
A. Straight to the lake, I think, 10 miles.
Q. South and west?
A. Southwest.
Q. About 10 miles?
A. Yes, sir, I think so.
Q. Did you ever take any grain over there?
A. No. I never be there.
Q. You have never been there?
A. No, sir.
Q. Mr. Larson, if I understand your testimony correctly about the 1897 flood, it came up pretty high, it was very high in the spring and summer?
A. Yes, sir.
Q. But it went off?
A. Yes, sir, it went down.
Q. Went down much more than it did in 1915 and 1916?
A. Yes, sir, much quicker than that but there wasn't raining?

Q. But it did, that is a fact, the lake went down quicker
1932 than it did in 1915 and 1916?

A. Yes, sir.

Q. Mr. Larson, you don't know Mr. Tenney, do you, who lives south of you?

A. No.

Q. Jim Tenney or Dan Tenney, living south of Lake Traverse in Folsom township?

A. No, sir, I don't know them.

Q. They have testified in this proceeding, Mr. Larson, James C. Tenney particularly, that in the spring of 1916, the high water flood of 1916 was as high as it was in 1897; do you think they are incorrect on that?

A. No, sir.

Q. That is not correct?

A. No, sir.

Q. How much lower will you say that the level of the water in Mud Lake now is, below the high water mark in 1897?

A. Oh, I can't hardly tell that. The water is all gone far away from that zone now, so I can't tell that now.

Q. You couldn't tell whether it was a foot or two feet or three feet?

A. Over two feet, I think, more than that.

Q. This stone is how high above the ground?

A. Three feet.

Q. The top of the stone is three feet from the ground?

A. Yes, sir.

Q. And the water is nowhere near the stone now?

A. No, sir, it is not.

Q. How far from the stone is it down to the water now?

A. Well, I don't know; it is two or three rods, I guess.

Q. Down to the water?

A. Yes, sir, but there is hard to tell how deep that water
1933 is for me.

Q. Is the bank pretty steep from the stone down to the water's edge?

A. No, it isn't steep there.

Q. Just slopes down?

A. Yes, sir.

Q. Do you remember about the summer of 1908, whether you had lots of rain or whether it was dry in May and June, do you remember whether that was wet or dry?

A. Well, there was dry then, I think.

Q. Wasn't much rain?

A. No.

Q. In May or June?

A. No.

Q. How was it in June, 1914?

A. It was raining.

Q. Pretty wet?

A. Yes, sir.

Q. In June, 1914?
A. Yes, sir.
Q. How was it in 1905, in May and June, was it wet or dry?
A. Yes.
Q. Which, wet or dry?
A. 1905?
Q. Yes, sir.
A. There was some raining then.
Q. Pretty wet that summer?
A. Yes.
Q. Do you remember how it was—what do you call the wet years that you lived there?
A. Oh, I call the wet years, 1914, 1915 and 1916.
1934 Q. And how about 1905?
A. Oh, it was wet then.
Q. How about 1908?
A. Well, it was, I think it was dry then.
Q. How about 1912?
A. It was dry.

Redirect examination.

By Mr. Palmer:

Q. In 1916 in your trips to Wheaton, was there any time that you saw the water up over the wagon bridge?
A. No, sir.
Q. How much of this Schroeder land was out of water in 1915 as compared with 1897?
A. Oh, there was 3 or 4 acres more. Oh, more than that, I think; I think 5 acres up in 1914.
Q. How was it in 1915?
A. Oh, there was a little more water.
Q. 1916?
A. There was more than that, too.
Q. More water than in 1915?
A. Yes, I think 4 acres up in 1916?
Q. 4 acres up?
A. Yes, sir.
Q. And about 2 acres there in 1897?
A. Yes, sir.
Q. This Skifstrom land, was there more water upon that in 1897 than there was in 1916?
A. Sure.
Q. Doesn't Schroeder cultivate any land there?
A. No, sir.
1935 Q. What does he do, have a pasture?
A. Yes, sir, he have some cattle.
Q. And horses?
A. Yes, sir, he has two horses.
Q. But he doesn't farm my land?
A. No, sir, he doesn't put in his land.

Q. Does Skifstrom farm his land?
A. He have a little. I don't know how many acres, around 20 acres.
Q. Did they buy that land, do you know, or just settle on it?
A. Just settled on it.
Q. Didn't buy it of anybody?
A. No, sir.
Q. This Mr. Tenney that he has talked about lives about 20 miles away from you, doesn't he?
A. Yes, sir.
Q. You don't know him, or anything about him?
A. No, sir.
Q. Or anything about the water down at his place?
A. No.
Q. You are talking about the water there at your place?
A. Yes, sir.
Q. In Mud Lake?
A. Yes, sir.

Recross-examination.

By Mr. Bronson:

Q. What do you mean when you answered Mr. Palmer that these fellows hadn't bought this land over west but had settled on it?
1936 A. Yes, I don't know what they call the land, Skifstrom can't take a homestead.
Q. You don't know very much about it as to how they got the land, do you?
A. No.
Q. Just what you heard?
A. Yes, sir, sure.

ANDREW JOHNSON, being sworn in behalf of defendant, testified as follows.

Examined by Mr. Palmer:

Q. How old are you?
A. 51 years.
Q. Where do you live?
A. Lake Valley township, Traverse county, Minnesota.
Q. Which part of Lake Valley township do you live?
A. West part, Section 3.
Q. On what part of Section 3 of West Lake Valley do you live?
A. Southwest quarter.
Q. That is divided, I believe, into government lots, Mr. Johnson?
A. Yes, sir.
Q. But you live on what would be the southwest quarter of Section 3, Township 127, Range 47, is that right?
A. Yes, sir.

Q. Does that adjoin the land of the witness John L. Larson on the south?

A. On the north.

Q. That is he is north of you?

A. Yes, sir.

1937 Q. How much land have you there?

A. 155 acres.

Q. Have you in addition to this some land to the west next to the lake shore?

A. There is some meandered land.

Q. Some land outside of the meander line, riparian land in the lake?

A. Yes, sir.

Q. How much of that have you got that you can use?

A. About 5 acres.

Q. That lies down next to the lake, does it?

A. Yes.

Q. And where is your dwelling house?

A. About 30 rods from the lake?

Q. That would be easterly of the lake shore?

A. Yes, sir.

Q. Are you in plain sight of the lake?

A. Yes.

Q. Where are your barns and other farm buildings?

A. Below the house, closer to the lake.

Q. Is there a road between your house and the other outbuildings?

A. Yes, sir.

Q. So that your barn and other farm buildings are closer to the lake than your house?

A. Yes, sir.

Q. How near to the lake are your barns and other outbuildings?

A. About 20 rods to the barn.

Q. What year did you come upon this land?

A. 1892.

Q. Have you lived there continuously ever since?

A. Yes.

1938 Q. And operated the farm?

A. Yes, sir.

Q. Did you take this land from the government as a homestead?

A. Yes, sir.

Q. Have you observed the stage of the water in that part of the lake immediately west of your buildings during all the time you have been there?

A. Yes, sir.

Q. Do you use the lake for watering your stock, your cattle and horses?

A. Yes.

Q. Take the year 1892 when you came there, what was the stage of the water in this Mud Lake that lies directly west of your buildings?

A. Perfectly dry.

Q. And what did you observe particularly about that?

A. Well, I suppose it had been a dry season.
Q. It was a dry season, what about people driving across there?
A. They drove across there any place.
Q. Was that the year of the opening of the reservations?
A. Yes, sir.
Q. To the west in South Dakota?
A. Yes, sir.
Q. The Sisseton and Wahpeton reservations?
A. Yes, sir.
Q. Whereabouts did you see people driving across that season?
A. It wasn't there that spring when it opened, I came in July.
Q. Then where did you see people driving across?
1939 A. I drove across and cut some hay on the other side of the, that is, on the other side of the flat there. I was going to put in grain the next spring but we got a little water and I didn't do it——
Q. Over in the lake bottom?
A. In the lake bottom.
Q. How far from your house is that in rods?
A. 30 or 35 rods.
Q. Is there a sort of stream of water running along just west of your buildings and then some land on the other side of that?
A. Yes, it is.
Q. In times of low water?
A. Yes, sir, when it is running it is running north a little.
Q. It was over on the other side of it that you went to cut some hay in 1892?
A. Yes, sir.
Q. Was that over to where this Schroeder place was, that far?
A. Not quit that far.
Q. Not quite that far over west?
A. No, sir.
Q. How much hay did you cut over there that year?
A. I forget, I don't think it was very much that year but about 10 or 15 tons.
Q. What was the condition of the bottom of Mud Lake when it was dry that spring or that season?
A. It was hard.
Q. Is it boggy land, swampy, or is it hard land?
A. It is a hard bottom, except there is a little mud on top, the rest is hard.
1940 Q. It is a hard bottom, some mud on top?
A. Yes, sir.
Q. How is it as to rocks?
A. There is a lot of rocks.
Q. There are lots of rocks clear across to the Dakota side?
A. Yes, sir, except a few places might be a little clean but it is an awful pile of rocks.
Q. Are they large or small rocks?
A. Both kinds.
Q. Hard?

A. Yes, sir, some of them is hard and might be some different.
Q. They are what you call boulders, are they?
A. Some boulders, yes, some big rocks.
Q. Are there so many that the land could not be cultivated if it were dry?
A. Not very much of it; a fellow could plow a piece here and there, probably small pieces, that is, straight west of me, anyhow.
Q. Were there others who cut hay over west of you there in 1892?
A. Yes, sir.
Q. Quite extensive?
A. Yes, sir.
Q. Was this man Swan living over to the southwest at that time?
A. Yes, sir.
Q. How far was he from your place?
A. About a mile and a half.
Q. And that is what direction from your place?
A. Southwest.
1941 Q. He had some buildings there, did he?
A. Yes, sir.
Q. When did he move away from there?
A. I can't remember the year exactly, Skifstrom bought him out, I forget the year but he must have been there at least 10 years.
Q. After you came?
A. Now, Skifstrom would be there about 10 years.
Q. He has been there about 10 years now?
A. Yes, sir.
Q. Where is Swan, what became of him?
A. He is in Wheaton.
Q. Do you recollect when this man Schroeder came there?
A. Yes.
Q. How far from your place did he settle?
A. A little over a mile.
Q. Which way?
A. It is a little bit northwest, pretty near straight west.
Q. Did he build some buildings over there?
A. Yes, sir.
Q. And is he there yet?
A. Yes, sir.
Q. Does he cultivate any land?
A. No, sir.
Q. What does he do?
A. Raise cattle and trapping and hunting.
Q. Fishing?
A. Yes, sir, a little.
Q. His land is all pasture land and hay land, is it?
A. Yes.
1942 Q. And how is Skifstrom, does he do any cultivating of his land?
A. A little.
Q. Does he also keep a great many cattle?
A. Yes, he has got 30 or 40 head.

Q. Do they have these lands of theirs fenced or do they rely on the water for a fence?
A. They got some fences.
Q. Fenced their pastures clear around?
A. No, sir.
Q. What do they use for the rest of the fence?
A. The water.
Q. Depend on the water as a fence?
A. Yes, sir.
Q. And do you know whether these parties bought these lands or did they just settle on them?
A. They just settled on them. I think Skifstrom got it for a homestead, however, he got it surveyed.
Q. When did he get it surveyed?
A. Just this summer.
Q. And he is taking steps now to get it as a homestead?
A. Yes, sir.
Q. Has Schroeder ever taken any steps to get his, to your knowledge?
A. No, sir?
Q. And when you cut hay over there on those marshes, did you have to rent the land from anybody?
A. No, sir.
Q. Or get any permission or anything of that kind?
A. No, sir.
Q. Do people go there and just cut hay wherever they want to go?
A. Yes, sir, they did at that time.
1943 Q. How is it recent years; take this year, how was it?
A. You couldn't cut no hay.
Q. Why?
A. It was a little too much water there.
Q. You have spoken of 1892 when you came there; how was it in 1893?
A. Got a little bit of water in 1893.
Q. In this Mud Lake?
A. Yes, sir.
Q. And in 1894?
A. Well, we got a little water then too.
Q. In 1892 did you make any use of this riparian land of yours that you spoke of?
A. Yes, sir.
Q. What did you do?
A. Pasture.
Q. And in 1893 and 1894 did you pasture it?
A. Yes, sir, I have had a pasture there all the time.
Q. In 1895 how was it?
A. The same, a little more water.
Q. In this Mud Lake?
A. Yes, sir.
Q. And in 1896?
A. We had water a little ever since 1892, since I came up to date.

Q. It has never been entirely dry since 1892?
A. Not entirely.
Q. And in 1896, how did it compare with 1892 and 1893?
A. A little higher water.
Q. In the year 1897, tell us about that.
A. Well, there was water, I don't recollect exactly how high it was but there was quite a lake.

1944 Q. Did this Mud Lake fill up in 1897?
A. No, sir, not very much.

Q. I guess perhaps you don't understand me, Mr. Johnson. I am asking you now about the year 1897.
A. Oh, 1897, I thought 1907.
Q. No, the year 1897, years after 1896.
A. That was the time we got the high water.
Q. That was the time you got the high water?
A. Yes, sir.
Q. Did this Mud Lake fill up entirely?
A. Yes, sir.
Q. And more too?
A. Yes, sir.
Q. Just go on and tell us how high the water came up that spring, Mr. Johnson?
A. In 1897?
Q. Yes.
A. Come clear up to my barn, touched just the foundation of my barn.
Q. At what time in 1897,what time in that season did you see the water the highest, Mr. Johnson?
A. First part of April.
Q. And you say it came up to the foundation of your barn. How much did it come up on the foundation, anything?
A. Not very much, just touched it.
Q. Had you ever seen it as high as that before?
A. No, sir.
Q. Have you ever seen it as high as that since?
A. No, sir.
Q. Now, how did it affect your pasture, this riparian land that you speak of, that spring?
A. That went down, most of it.

Q. And that spring, how high did the water come up on
1945 that pasture?
A. It went pretty near all over that meandered land.

Q. Riparian land, you mean?
A. Yes, sir, riparian land.
Q. Went pretty near all over that?
A. Yes, sir.
Q. How long did the water stay up at this high stage that spring, 1897?
A. About 15 days, 12 or 15 days.
Q. Then how did it go down?
A. It went down a little gradually.

Q. Take along in May, how was it?
A. Oh, it was quite high yet in May.
Q. In June?
A. Well, it went down a little gradually all summer.
Q. July?
A. Yes.
Q. And August?
A. We were cutting hay on the other side a little in July on the island.
Q. You cut hay over on the island some in July of 1897?
A. Yes, sir.
Q. How did you get over there?
A. On that big boat.
Q. What kind of a boat? Do you mean boat or raft?
A. A raft.
Q. This one that Mr. Larson has spoken of?
A. Yes, sir.
Q. What was the size of that raft?
A. 14 x 18.
Q. And was it built at your place as he has described?
A. Yes, sir.
1946 Q. And what did you use that for?
A. In the first place we took stock over to the Dakota side.
Q. For whom?
A. For a fellow by the name of Hultgren and Anderson.
Q. They were settlers over on the Dakota side, or going to settle there?
A. Yes, sir.
Q. And you took them over with this raft?
A. Yes, sir.
Q. Horses and cattle did you take?
A. Yes, sir.
Q. And machinery?
A. Yes, sir.
Q. Now, why didn't they go across there on the reservation bridge?
A. They couldn't.
Q. Why?
A. Too much water.
Q. They couldn't make use of that crossing there that spring?
A. No, sir.
Q. Why didn't they go across at White Rock, that grade?
A. They couldn't.
Q. Why?
A. Too high water there.
Q. How long through that summer did you use that raft for carrying stuff over to the Dakota side?
A. Well, we only made three or four trips to the Dakota side but we used it to take some stuff on the island to Swan and then we used it when we went over to cut hay.
Q. Take the horses and mower and so on?

1947 A. Yes, sir.
Q. Over to the island with the raft?
A. Yes, sir.
Q. How much of that Schroeder island, place that afterwards became the Schroeder place, how much of that was out of water that year?
A. Well, I don't know, I judge about 30 acres.
Q. Of the Schroeder island?
A. Yes, sir, something like that, that was the last part of July.
Q. How was it in the spring?
A. It wasn't hardly any, just a little spot.
Q. In the spring how was this Swan island?
A. That was a little more up; I should judge about—well, I wasn't there when the high water was but I was there right after.
Q. About how many acres would you think there was of that out of water?
A. About 40 acres.
Q. Do you recall the incident that Mr. Larson has described of their tipping over with this raft?
A. Yes, sir.
Q. Were you on the trip?
A. No.
Q. Did you see it, did you see the trouble they had?
A. Yes, sir.
Q. Do you know how deep the water was there where they tipped over?
A. I should judge about 4½ or 5 feet.
Q. You could see the horses in the water?
A. I could see their heads.
Q. What did they do with the horses?
1948 A. Cut them loose and they swam over to the island?
Q. Which island?
A. Where Schroeder lives now.
Q. The horses swam over there?
A. They led one and the others followed to that island.
Q. How long did they keep the horse there?
A. Something around two or three weeks.
Q. How did they feed them?
A. They had an old haystack that was pretty near all in water but they used some of that, and then they took some from the Dakota side, the boat.
Q. In that season of 1897 did you have occasion to go to Wheaton, Mr. Johnson?
A. Yes, sir.
Q. How far are you from Wheaton?
A. Five miles.
Q. Is Wheaton your market town?
A. Yes, sir.
Q. Did you have any trouble about the water between your place and Wheaton?
A. Yes, sir.

Q. I think this Mustinka river is between your place and Wheaton, isn't it?

A. Yes, sir.

Q. Tell us what trouble you had there, if any?

A. Well, I was building a house that spring, a living house, and I got my lumber home in the winter time, everything except the cement or the plastering material, the cement for the foundation, and I had to get that. So I took my team and drove up to the river and then I got a boat and rowed across the river and hired another team on the other side to go to town with.

Q. How did you get your plaster and cement home?

1949 A. I drove it back to the river, took it in a boat across and then my team back home again.

Q. How wide was the Mustinka river that spring?

A. Where I crossed it it was pretty near a half a mile.

Q. And how was it north from there?

A. It was wider.

Q. It was still wider?

A. Yes, sir.

Q. What was the current of the river, did it flow pretty swiftly?

A. Yes, sir.

Q. Have some trouble in getting the boat across?

A. Not very much but it was a swift current.

Q. How far were you south from the railroad bridge, the Milwaukee railroad bridge?

A. About a mile and a half.

Q. There is a narrower part of the river there, isn't there?

A. Yes, sir, a little.

Q. And you say it was still wider up above?

A. Yes, sir.

Q. Could you see up the river quite a ways?

A. Yes, sir.

Q. How wide was it, do you think, up above the railroad bridge?

A. Well, I don't know, it must be close to a mile some places.

Q. How long were you troubled in getting across to go to Wheaton that spring?

A. It didn't last so very long but about a couple of weeks.

Q. About a couple of weeks there was that flooded condition there. Could you use the grades and bridges?

1950 A. I think all the bridges went; no, we couldn't use the bridges at that time.

Q. The bridges were washed out, you mean?

A. Yes, sir.

Q. Can you think of anything else that calls your attention particularly to the high water in 1897?

A. No, I don't.

Q. In 1898, what about that year?

A. It was lower.

Q. Was it still high, higher than usual?

A. Yes, it was a little higher than ordinary.

Q. In 1899?

A. Well, it was a little lower than 1898.
Q. In 1900?
A. Well, that was about the same.
Q. About the same as 1899?
A. Yes, sir, something around there.
Q. And in 1901?
A. I think that was about the same too.
Q. 1902?
A. Well, it was about the same.
Q. About average years those were?
A. Yes, sir.
Q. 1903?
A. It wasn't very much different in them years.
Q. It ran about average years?
A. Yes, sir.
Q. Was there water in Mud Lake?
A. Oh, yes.
Q. Quite a lot of water there?
A. Yes, sir.
1951 Q. Do you know how much water there is there now?
A. Yes, sir.
Q. How did it compare those years along with what is in there now?
A. It was lower than it is now, a little, especially in 1911, then it was quite a little lower.
Q. I was asking you about the years 1899, 1900, 1901, 1902 and 1903?
A. It is lower than it is now.
Q. You think it was a little lower than it is now?
A. Yes, sir.
Q. And in 1904 and 1905, along in there?
A. I even think it was a little lower than it is now in them years.
Q. 1906?
A. Yes.
Q. What would you say, how was it then?
A. I don't think it was any higher than it is now.
Q. In 1907?
A. Well, that is about the same.
Q. 1908?
A. Well, that is something around the same, too.
Q. That is, you remember nothing distinctively about those years?
A. No, sir.
Q. 1910 and 1911?
A. 1910 and 1911 was a little lower. 1911 was a good deal lower, lower good deal than it is now.
Q. In 1911 was the lake all dry, Mud Lake?
A. No, sir, not exactly.
Q. It wasn't as dry in 1911 as it was in 1892 and 1893?
A. No, sir.
Q. Not near as dry, would you say?
1952 A. No.

Q. Was there any other time they could drive across there?
A. They can pretty near in one spot, you couldn't drive but you could walk.
Q. What year was that?
A. 1911.
Q. One place where you might walk across?
A. Yes, sir, pretty close to it.
Q. But there was no driving across there?
A. No.
Q. 1912 how was it?
A. Well, I think it was a little higher, not very much.
Q. 1913?
A. Well, that was about the same too or possibly a little higher.
Q. 1914?
A. Well, in 1914 it got—it raised a little.
Q. When did it begin to rise in 1914?
A. In the summer.
Q. In the summer?
A. Yes, sir.
Q. Take the month of June, 1914; do you remember about the rainfall of that month?
A. I think we had a pretty good rainfall in June of 1914.
Q. Did the lake begin to rise a little then?
A. Yes, sir.
Q. How about through the fall of 1914?
A. I don't think we had so very much rain but the lake stayed up pretty good.
Q. 1915; take the spring of 1915, do you remember about the lake?
A. Yes, sir.
Q. How was it?
1953 A. It was a little higher.
Q. A little higher than in 1914?
A. Yes, sir.
Q. In the summer of 1915?
A. It raised quite a little in 1915.
Q. About what months?
A. Latter part of May and June.
Q. How about the rainfall?
A. Had a pretty good rainfall in 1915.
Q. In the months of May and June?
A. Yes, sir, and July and August.
Q. Did you observe whether the rainfall was greater than ordinary?
A. It was a little more than the years before.
Q. And the lake came up more?
A. Yes, sir.
Q. Through the fall of 1915 how was it?
A. Well, it was a little higher than the year before.
Q. Take the spring of 1916, how was it?
A. Pretty high.
Q. And in May and June, 1916, what was it?

A. It was higher yet.
Q. How high did it come up?
A. Oh, I should judge, well, it was over two feet higher than it is now.
Q. How was it with reference to the foundation of your barn?
A. It didn't come up to my barn.
Q. Didn't it come up to the barn at any time in 1916?
A. No.
Q. How near did it come to the barn?
A. Well, it was about 150 feet, I should judge about 10
1954 inches lower than 1897.
Q. It was about 10 inches lower in 1916 than it was in 1897?
A. Something around there, yes, sir.
Q. How about this riparian land of yours, this pasture, was that flooded in 1916?
A. A little.
Q. As much so as in 1897?
A. No, sir.
Q. Now, in 1916 how about the Schroeder island, how much of that was out of water?
A. I should judge, of course I wasn't there but I know we had to move his cattle away to another island, he didn't have feed enough for them.
Q. Was there as much of that Schroeder island out of water in 1916 as there was in 1897?
A. There was more out in 1916.
Q. How much more, twice as much or three times as much or can you give us any idea about that?
A. It might be twice as much because that is a kind of a knoll that comes up, it ain't quite as flat and the water was down quite a little, it gets big like that.
Q. You think there was twice as much in 1916 as there was in 1897?
A. Yes, sir.
Q. How about the Skifstrom island, how much of that was out in 1916 as compared with 1897?
A. Quite a little more.
Q. How many acres do you think were out of water in 1916?
A. I couldn't tell.
Q. You said there was about 40 acres in 1897?
A. I should judge about 80, anyhow, in there.
1955 Q. In 1916?
A. Yes, sir.
Q. Did Schroeder and Skifstrom stay on their places through 1915 and 1916?
A. Yes, sir.
Q. And are they there yet?
A. Yes, sir.
Q. Now, how about the water staying up in 1916 as compared with 1897?

A. It stayed up better in 1916.
Q. Why?
A. It was raining pretty near all summer.
Q. Of 1916?
A. Yes, sir.
Q. Now, Mr. Johnson, how did the rainfall through the summer of 1916 compare with 1897?
A. Oh, we had a good deal more rain in 1916 than in 1897.
Q. You had a good deal more rain through the summer of 1916?
A. Yes, sir.
Q. How did the summer of 1897 as to rainfall compare with this summer?
A. In 1917?
Q. Yes.
A. Well, this is a dryer year than 1897, I think.
Q. You think it is dryer?
A. Yes, sir.
Q. But would you say that you had very light rainfall through 1897, through the summer?
A. Yes, I think it was kind of light.
1956 Q. Nothing compared with 1916, Mr. Johnson?
A. That is right, yes.
Q. Mr. Johnson, you recollect the time they built this Mustinka ditch in 1913, dredged out the Mustinka river?
A. Yes, sir.
Q. Did you notice or have you noticed any difference in the stage of water in Mud Lake there since they built that ditch than before, has it been any different?
A. No, only we had a heavy rainfall.
Q. The heavy rainfall has kept the lake up more?
A. Yes, sir.
Q. But the ditch, has that made any difference with the lake, so far as you know or have observed?
A. I don't think so.
Q. Were there some cultivated lands along the edges of the lake shore there?
A. Not on my land.
Q. Are there some north of you or south of you?
A. There ain't any south.
Q. Are there some north?
A. Larson has got some.
Q. Anybody else got any?
A. No, not near to my place.
Q. Were you up to this land north of White Rock in 1897?
A. No.
Q. Or up to White Rock?
A. No, not when it was high.
Q. Take those three years, 1914, 1915 and 1916 as to rainfall, how did they compare with any other three years that you have known?

A. We had more rains for those years than I ever saw be-
1957 fore, especially in 1916.

Q. Did you go to Wheaton in the spring of 1916?

A. Yes.

Q. Quite frequently?

A. Yes, sir.

Q. Did you have any trouble getting across the wagon bridge?

A. We got across the bridge all right, there was water over the grade then on the south side.

Q. Do you make use of the state road in going to Wheaton?

A. Yes, sir.

Q. You cross the wagon bridge that is right below the railroad bridge?

A. Yes, sir.

Q. In 1916 was there ever any time that you saw the water go over that bridge?

A. No.

Q. It was over the grade, you say?

A. Yes, sir.

Q. And how high was it on the bridge, itself?

A. There wasn't any on the bridge.

Q. There was none on the bridge at any time, Mr. Johnson?

A. No, sir.

Cross-examination.

By Mr. Bronson:

Q. This Mud Lake the way it is now has been about the same during the past month, hasn't it?

A. Yes, sir.

Q. That is, for over a month past the Mud Lake opposite
1958 your place has been about the same?

A. It might was went down a little.

Q. It might have gone down a little?

A. In the last month, you mean?

Q. Just the past month.

A. It has gone down a litle in the past month.

Q. That is, maybe it was a litle higher a month ago than it is right today?

A. Yes, sir.

Q. But not very much?

A. No, sir.

Q. You say that in 1897 this Mud Lake was up to the foundation of your barn?

A. Yes, sir.

Q. But in 1916 it was 10 inches lower?

A. Just about, something like 10 inches.

Q. How much lower is it now, the lake, than it was in 1916?

A. About two feet or probably a little over 2 feet, probably 2½ feet.

Q. Between 2 feet and 2½?
A. Yes, sir.
Q. And the lake now is lower than it was at the highest flood stage in 1916?
A. Yes, sir.
Q. You know William Ringdahl?
A. Yes, sir.
Q. Know where he lives?
A. Yes, sir.
Q. Know where his cottage is on the lake?
A. No, not exactly, I think I know where it is.
Q. Do you know where the Mustinka river empties into the Lake Traverse?
1959 A. Yes, sir.
Q. Now, apparently in 1892 Mud Lake was perfectly dry?
A. Yes, sir.
Q. And in 1911 the lake was low?
A. Yes, sir.
Q. You could almost walk across it?
A. Yes, sir, that is on one point. Of course, there was a little water——
Q. Generally speaking, from 1898 to 1910 the lake was low?
A. Yes, sir, it was rather low.
Q. And the lake is low, comparatively speaking, now?
A. Yes, sir, a little lower.
Q. And from 1898 up to 1910, generally speaking, the level of the lake was lower than it is now?
A. Yes, sir, I think so.
Q. Now, in 1892 it was still lower?
A. Yes, sir, that is right.
Q. And from 1893 to 1896 it was a little higher?
A. Yes, sir.
Q. But not as high as it was in 1898?
A. No.
Q. Now, in 1914 in the fall, the lake started to get higher?
A. Yes.
Q. And it stayed high during the fall?
A. Yes.
Q. And in the spring of 1915, it was high?
A. Yes, sir, it was pretty high.
Q. And that stayed most of the summer, through April, after the spring rains went off and the flood came on, some time in June, 1915, didn't it start to come?
1960 A. Yes.
Q. And high water, comparatively high state of water in July and August and September of the year of 1915?
A. Yes, sir.
Q. And that stayed in a way high all winter, didn't it?
A. Yes, sir, pretty well.
Q. And then in the spring of 1916 comes on this high water in April, higher than it was in 1915?

A. Yes, sir, a little higher in April.
Q. And it stays high in May, too, doesn't it?
A. Yes, sir.
Q. And in June?
A. Yes, sir.
Q. And in July?
A. Yes, sir.
Q. And in August?
A. Yes, sir, keeps up——
Q. Right through until fall?
A. Yes, sir, pretty high.
Q. And stays comparatively high in the winter as compared with those early years?
A. Yes, sir.
Q. And then in the spring of 1917, this last spring, fairly high?
A. Yes, sir.
Q. And it has gone down gradually this year until it reached its present level?
A. Yes, sir, it has been going down quite a little.
Q. But it has been as high all season as it is now?
A. No, it is lower now than it was last spring.
1961 Q. That is what I say, it is lower now than it was last spring?
A. Yes, sir.
Q. It was higher all season, higher than it is now?
A. Yes, sir.
Q. You have land pretty well drained there, Mr. Johnson?
A. Yes, sir.
Q. No county ditches along there?
A. No, sir.
Q. You farmed that all the years you have lived there?
A. Yes, sir.
Q. Raised wheat on it?
A. Yes, sir.
Q. Other crops?
A. Yes, sir.
Q. Every year you lived there?
A. Yes, sir.
Q. You speak of residing from Wheaton some five miles and that Wheaton is your trading point?
A. Yes, sir.
Q. In going to Wheaton, how do you travel to reach Wheaton?
A. We generally go a mile east and then a mile south and then east again and we strike the railroad track.
Q. Then you cross the Mustinka river?
A. Then we cross the Mustinka river.
Q. At the bridge?
A. Yes, sir.
Q. Which is northwest of Wheaton?
A. Yes, sir.
Q. Then into town?

A. Yes, sir.

1962 Q. And is that the way you went in 1897?

A. No, not——

Q. When you went across by boat?

A. No, sir.

Q. Where did you cross the Mustinka river by boat in 1897?

A. About a mile and a half below that.

Q. About a mile and a half below the bridge?

A. Yes, sir.

Q. That crossed the Mustinka river?

A. Something around there.

Q. And you used a boat to get these materials, as you speak of, because you couldn't drive on the highway?

A. Yes, sir.

Q. During all the years you have lived there up to that time you have never seen water over the highway in that condition up to that time?

A. No, sir.

Q. Up to that time you had never seen the lands flooded around in that territory to the extent they were at that time?

A. No, sir.

Q. And as you went along this mile south of the bridge from Wheaton you say the river there where you went over by boat was about half a mile wide?

A. Yes, sir.

Q. At that time the Mustinka state ditch hadn't been constructed through that Mustinka river at that place, had it?

A. The state ditch? What state ditch?

Q. This state ditch that went down by a dredge that dredged out the river.

A. No, sir.

Q. At that time the Mustinka river was the way it had been there all the years you had lived there?

1963 A. Yes, sir.

Q. And before this state ditch was put in you saw the Mustinka river, did you not?

A. Yes, sir.

Q. Year after year, from 1892 up to 1897, as you went to Wheaton, your trading town, from time to time?

A. Yes, sir, sure.

Q. And during that time no dredge had put any earth on either side of it, there weren't any cut-offs in it, were there?

A. No, sir

Q. And it was in its natural state so far as you could observe, wasn't it?

A. Yes, sir.

Q. In the spring of 1897 this river was outside of its banks?

A. Yes, sir.

Q. Spread over the banks on both sides of the river?

A. Yes, sir.

Q. To the north and the south?

A. Yes, sir.
Q. As far as the eye could reach?
A. You could see further but it was pretty wide.
Q. If you looked to the north along the river and when you looked to the south along the river you could see it was out of its banks?
A. It went further north than south.
Q. That is, it spread out of its banks more, you mean?
A. Yes, sir.
Q. Than it did south?
A. Yes, sir.
Q. What time of the year was this you went over there to get these materials?
A. About the 10th or something around the 10th of *of* 1964 April.
Q. How long before that had you driven to Wheaton on the road?
A. I haven't been there before since after the snow thawed out, I drove with the sled last time.
Q. How long after that before you drove to Wheaton?
A. After that? I couldn't tell but about three weeks you could drive, I suppose.
Q. How long did you observe the Mustinka river to be out of its banks?
A. Well, something around three weeks. After that I suppose probably you could drive; that is, if the bridges were there.
Q. The bridges were carried away?
A. Yes, sir.
Q. You would say offhand as you recollect it that the Mustinka river along that territory just described when you went to go to town from time to time was out of its banks something like three weeks?
A. Something around there.
Q. You still trade at Wheaton?
A. Yes, sir.
Q. Traded there all these years?
A. Yes, sir.
Q. Now, Mr. Johnson, from 1897 up to 1914, as you went to Wheaton from time to time in the spring, did you see that Mustinka river overflowed at any time?
A. No, not very much.
Q. Will you say you didn't see it any time overflowed?
A. Well, I kind of think I saw the river once, it overflowed one year, I forget the year.
Q. How about the spring of 1908 about being out of its 1965 banks north of that bridge at Wheaton?
A. It might be that year; I have an idea it was one year.
Q. There in the spring of 1908?
A. It must have been in that spring.
Q. You were referring to one instance in the spring of 1908, that was the year you observed that the Mustinka river north of the bridge was out of its banks and flooding territory north of there?

A. I couldn't tell you what year it was, but it was one year.

Q. Were there some years from 1897, after that year 1897 up to the year 1914 when you saw the lands sometimes in the spring when there was heavy rains along the Mustinka river north of that bridge overflooded?

A. I think there was one year but I forget what year it was, it was a little over.

Q. Do you say there was only one year?

A. Yes, I think that was all. Of course, it has been a little high a couple of times between that time.

Q. For instance, the year 1907 it was high, wasn't it?

A. Yes, sir.

Q. Do you remember 1907, it was a little high for a while?

A. I forget what year it was but I know it was one year, it was quite high.

Q. You remember in 1907 the lake was high, a little high?

A. Yes, I know it was one year it was a little higher than usual, the river and the lake both. I can't recollect what year it was to be sure.

Q. And in 1912?

A. I know the lake was kind of low that year.

Q. How was the Mustinka river along by this bridge and
1966 north of there near Wheaton in 1912; have you any recollection of its being overflooded?

A. No, I don't think it was in 1912, that is, that I can remember.

Q. Isn't it fairly a true statement for you to make from the visits you made to Wheaton that from 1897 to the year 1914 you have—when the spring broke up and the winter snows melted and spring rains came, you frequently saw the Mustinka river north of that bridge to be outside of its banks?

A. I am pretty sure it was one year but I can't recollect what year it was.

Q. That is the only recollection you have, one year?

A. Yes, sir.

Q. You know where the Milwaukee railroad tracks are?

A. Yes, sir.

Q. And you know where the Swedish church is, Lutheran church?

A. Yes, sir.

Q. And you know those lands along the Mustinka river between the Swede church and the Milwaukee railroad?

A. Yes, sir.

Q. And you have seen those lands some years in the spring overflowed between 1897 and 1914?

A. Yes, sir, I think I did one year especially but I can't recollect the year.

Q. And the only recollection you have is one year in the years I have mentioned?

A. Well, that is, to amount to anything.

Q. At other times you have seen it a little bit?

A. Yes, sir.

Q. Now, in 1914 you saw them dredging in this Mustinka river?

1967 A. Yes, sir.

Q. A dredge going down the river, digging out the river and putting up the earth on the banks of the river on both sides, did you not?

A. I thought that was in 1913; wasn't that 1913?

Q. Wasn't it 1914, too?

A. Yes, sir, both years.

Q. And didn't you see them along in the summer of 1914 down towards the railroad bridge dredging?

A. Yes, sir.

Q. And in the fall did you see considerable water in that Mustinka river?

A. I don't remember; in 1914?

Q. In the fall of 1914.

A. Yes, there was a little water in it in the fall of 1914.

Q. And in the spring of 1915 did you see considerable water in the Mustinka river?

A. Yes, there was some.

Q. And in July, 1915, did you see the Mustinka river overflowed some north of that bridge, some of the lands overflowed on both sides of it?

A. I don't hardly think so, I think it was quite high, though.

Q. 1915, you have any recollection now of the waters being outside of the ditch, outside of those embankments, spread out over the lands, any time during the year?

A. I think I did a little.

Q. And in 1916 you saw the ditch in the spring full of water?

A. Yes, sir.

Q. And the territory along both sides flooded with water?

1968 A. Yes, sir, there was quite flooded, all right.

Q. And you saw waters going across the railroad track or up to the railroad track?

A. I didn't see it going across the railroad track.

Q. Did you observe water close to the railroad track on the north and easterly side?

A. Yes, sir.

Q. And in 1916 did you see waters also cross the road that goes across this bridge near Wheaton?

A. Yes, sir.

Q. You could see yourself, could you not, Mr. Johnson, although you are not a surveyor—you do not pretend to be, do you?

A. No, sir.

Q. But you could see yourself that this ditch that was dug there, there was ground taken from the river and the ground taken from the river was put on the bank, wasn't it?

A. Yes, sir.

Q. Could you see that the ditch which was constructed in this Mustinka river was deeper than the old river was?

A. Yes, sir.

Q. And you could also see and observe that the ditch, the new

ditch, after they had gone through with the dredge, could carry more water than the old Mustinka river could, could you not?

A. Yes, sir.

Q. Now, do I understand you to testify that this new ditch did not and could not carry more water than the old Mustinka river into Lake Traverse?

A. Yes, I suppose it could.

Q. And if it carried more water into Lake Traverse there would be more water in Lake Traverse, wouldn't there?

A. Yes, if it rains.

Q. In answering the question that counsel asked about the
1969 effect of this ditch, you don't pretend to know anything about the ditches that were dug up in Redpath and Clifton townships, do you?

A. I know there was some ditches made.

Q. You haven't paid any particular attention to them?

A. No, sir.

Q. You don't know much about the first ditch started in Grant county and over into Twelve Mile Creek, do you?

A. No, sir.

(At this time adjournment is taken until Monday, November 5, 1917, at 10 o'clock, A. M., at Fairmount, North Dakota.)

Vol. VI.

1970 Hearing resumed at Fairmount, North Dakota, pursuant to adjournment with all parties present, on November 5, 1917, at 10:30 a. m.

B. W. SCHOUWEILER, having been recalled as a witness on behalf of the complainant, and having heretofore been sworn, testified as follows:

Direct examination.

By Mr. Pinkney:

Q. You are the same Mr. Schouweiler who testified at a previous hearing in this case at St. Paul, are you?

A. Yes, sir.

Q. You still live at Fairmount, North Dakota, do you?

A. Yes, sir.

Q. And are in business here?

A. Yes, sir.

Q. You are familiar, are you not, Mr. Schouweiler, with what is known as this flooded area that was flooded in the fall of 1914, and the years 1915, 1916 and 1917?

A. Yes, sir.

Q. Were you the owner of any lands within this flooded area in either of those years?

A. In 1915—yes, sir.

Q. Now I think you testified as to what that land was before—the lands you owned, to which you formerly testified—were they flooded in the years 1915, 1916 and 1917?

A. Yes, sir.

Q. By reason of these flood waters coming up from the Lake Traverse region?

A. Yes, sir.

Q. What was the condition of these lands as to crops in
1971 the year 1915 when these flood waters came on them?

A. You mean the prospect of a crop?

Q. What were the growing crops on these lands of yours?

A. There was an ordinary good crop growing.

Q. Now, Mr. Schouweiler, will you state to the court what the crops were on your lands, these flooded lands?

Just give the kind of crops that were on the land and the number of acres.

A. You mean as to the land that I had in?

Q. As to the land you owned or had in crop?

A. I had on that quarter ninety-five acres of wheat, twenty-two acres of oats, fourteen acres of barley and fifteen acres of flax, approximately. I didn't measure the soil.

Q. Did that embrace the entire quarter section?

A. Yes, sir.

Q. Was the entire quarter section of yours cropped in the year 1915 at the time these flood waters came on?

A. Yes, sir.

Q. Now what was the effect, if any, of these flood waters on these growing crops that year?

A. Why, the flood waters softened the ground so we couldn't go on and cut it, that is where the grain would have been fit to cut, as much of it headed out and practically filled but the high water prevented us from going on and cutting it.

Q. What did the flood waters do to the crops eventually?

A. Drowned it out.

Q. Destroyed it?

A. Destroyed it.

Q. How many acres of wheat did you have on this flooded land that was destroyed?

1972 A. I had about ninety acres. There was about five acres that I saved, I think.

Q. What proportion of the oats that were on these lands did you save?

A. I lost all of the oats and all of the barley and all of the flax.

Q. Did you harvest the other five acres of wheat?

A. Yes, sir.

Q. What condition was that in—was that in any way affected by these flood waters?

A. Yes, there was more or less which wasn't filled out and I laid it to that.

Q. Well, it wasn't well filled out?

A. No.

Q. I take it the wheat was not fully matured at the time the flood waters came on—is that true?

A. Yes.

Q. What yield did you get per acre for the five acres that you harvested, of wheat?

A. I think it was something like fifty-five bushels on the five acres.

Q. That would be eleven bushel to the acre?

A. Yes.

Q. Do you know whether or not that was an average yield of wheat per acre that year on lands in that locality that were not affected by the flood waters?

A. No, it wasn't an average.

Q. Do you know what the average yield per acre was on lands in that vicinity of wheat that year that were not affected by the flood waters?

1973 A. The crops varied on the different farms. I never stopped to figure out what the average would be. I judge it would be something like twenty or twenty-two bushels.

Q. On what do you base that statement?

A. The adjoining farms.

Q. That is lands not affected by the flood waters?

A. Yes, sir.

Q. How did you get your knowledge of that?

A. From the reports farmers gave me that they threshed so many bushels to the acre on their farm, and some other farmers threshed a little less and some a little more, and I would average it in the neighborhood of twenty to twenty-two bushels, in that immediate locality.

Q. In this general territory?

A. Well, probably a mile or two farther away it might have varied some.

Q. Is there any general fixed marketing period of the wheat crops produced on the lands in that locality, Mr. Schouweiler, that you know of, that is to say, is there any period of time when the bulk of the crop goes into the market?

A. Yes, the bulk I would judge would go into the market about threshing time.

Q. And continue up to what time, when the majority of the crop is on the market?

A. It is owing to the condition of the facilities farmers have for storing their grain. Some farmers have no granary or very small granaries, and others have no granaries whatever, and those that have no granaries have to rush it to the market from the machine to the elevator, and those that have granary room often store their wheat.

1974 Q. And carry it along for five or six months?

A. Yes.

Q. Is there anything within your knowledge that enables you to state here as to between what periods of time the majority of the wheat crop is generally marketed in this locality?

A. I would say from the time they start in threshing until Christmas.

Q. Until about the first of the following year?
A. Yes, sir.
Q. Now are you able to state what is the market point for the wheat produced on these lands in North Dakota, that were flooded in the years 1915, 1916, and 1917?
A. Fairmount and Blackmer and White Rock?
Q. The principal market place being at Fairmount?
A. For this north end.
Q. That is what I am talking about—the North Dakota lands.
A. No, I think Blackmer gets more from this flooded district than we do here.
Q. That is from the lands in North Dakota?
A. Yes. That is five miles south of us.
Q. Do you know what the average price per bushel for wheat was during that farming season of 1915?
A. I think it would average up about ninety-five cents a bushel, that is from the time they threshed until Christmas or New Years. I think ninety-five cents would be probably the average.
Q. Now, what would be the expense per acre, Mr. Schouweiler, of harvesting, threshing and marketing this wheat on your land that was destroyed by these flood waters? Can you give approximately the amount of expense per bushel?
1975 A. No, I cannot. I never figured on it. It varies from year to year owing to the fact that the yield varies. I would figure that by the acre. That is the only way you could get at it that I can see.
Q. It would cost something to harvest it?
A. Yes, sir.
Q. And cost something to thresh it?
A. Yes, sir.
Q. And it would cost something to market it?
A. Yes, sir.
Q. Now, if it was destroyed you would save that expense?
A. Yes, sir.
Q. Now, what would have been the total of those items of expense fixing it in cents per bushel, if you can?
A. I don't know if you can fix it per bushel. You can if you know how many acres or how many bushels you get off the quarter, but you can't fix it per bushel because that would be—it cost me just as much per acre to take care of my land as it would another man that raised half as much or twice as much per acre, so you have to figure that per acre.
Q. It would not cost as much to thresh half as many bushels per acre?
A. No, it varies, owing to the fact that the yield varies.
Q. Would it be your opinion that ten cents per bushel would cover those items of expense?
A. No, I don't think so.
Q. You think it would be more than that?
A. I think so.
Q. Have you computed so you are able to state?

A. Well, they charge as high as eight to nine cents for
1976 threshing a bushel.

Q. That includes a good many other things?

A. No, then there is the teams for hauling it in which is an expense.

Q. That is included in the charge for threshing per bushel?

A. That is what I mean. It costs you about that, and then you take care of the grain yourself at nine cents a bushel, and that would be possibly two cents a bushel on an average in this district. They all live near the station. Possibly costs two cents a bushel to get it to the elevator and nine cents for threshing would be eleven.

Q. That would cover the items of marking?

A. Yes, sir. Harvesting costs you about $1.25 an acre for shocking and binding and twine. Now, if you get that down to bushels you would have to tell how many bushels an acre you get to tell off hand.

Q. Well, you have given an average of twenty-two bushels?

A. It would be six cents a bushel. That would be seventeen cents it would cost about to thresh and market it.

Q. Now, making those deductions from the average cost of wheat in this vicinity for the wheat crop of 1915, that was destroyed on your lands what would have been the loss in dollars and cents to you for that wheat crop?

Mr. Palmer: Will it be understood that the State of Minnesota objects to the proof as to individual and private damages as not within the jurisdiction of the Supreme Court of the United States in this action; that the offered testimony is incompetent, irrelevant and immaterial, to any of the issues, herein; that the offered
1977 testimony is not the proper measure of damages; that no foundation has been laid for its introduction; nor has the witness shown himself competent or qualified to testify upon the matters inquired about; that this general objection is interposed to all of the evidence offered along these lines, and that all such evidence is received by the Commissioner over the objection of the defendant.

Mr. Pinkney: It may be understood that this same objection goes to all this testimony of this same general character.

The Commissioner: It is understood that this general objection shall be considered as interposed to all evidence of like nature offered by this witness and other witnesses who are hereafter called.

A. Figuring up what the loss would be on the ninety-five acres of wheat—deducting about seventeen cents, the loss would have been $1,541.

Q. Now, have you deducted from that final total all the items of expense that it would have been necessary to incur to have harvested and marketed this crop?

A. Yes, sir.

Q. Now, Mr. Schouweiler, I call your attention to your oats, crop of twenty-two acres that were lost by these flood waters on your lands in the year 1915. Do you know what the general average of oats were per acre on lands in that locality that year not affected

by the flood waters, so far as you have investigated and gained an opinion on that subject?

A. Well, no, I have not.

Q. Do you know what oats yielded generally that year on lands not affected by the flood waters?

A. I might have known at the time, but I couldn't tell you at this time what the average yield was.

1978 Q. What kind of a crop of oats was there indications of your having at the time these twenty-two acres were destroyed?

A. Why, the crops looked about an average crop of oats, which I would judge would run about forty bushels to the acre.

Q. And your twenty-two acres gave promise of yielding that per acre? An average crop?

A. Yes, sir.

Q. And that is what your opinion is as to what an average crop of oats is on these lands in this locality?

A. Yes, sir.

Q. And *at* you able to state at the present time what your loss on the oats, the twenty-two acres of oats would be?

A. No, I am not able to state that at this time unless I figure it out.

Q. Well, I expect you to figure it out because the Supreme Court isn't going to figure it out for you. If you had twenty-two acres of oats and you produced forty bushels to the acre?

A. At forty-five cents a bushel I would judge would be an average price for that fall. And figuring out about nine cents a bushel for the threshing and marketing and cutting, would make a loss of $316 on the twenty-two acres. A net loss.

Q. That is to say a net loss?

A. Yes, sir.

Q. Now, have you deducted in your computation all items of expense that would have been required to market the crop?

A. Yes.

Q. Now, I call your attention to the fourteen acres of barley that you say was destroyed. Do you know in a general way what

1979 the average per acre for barley was on the lands in that vicinity not affected by flood waters?

A. No, I do not.

Q. Have you knowledge as to what the average yield was per acre?

A. No.

Q. What is the average yield per acre you have been getting?

A. About thirty bushels—that is an ordinary crop—thirty bushels.

Q. Now you produced crops of barley on this land from year to year prior to this 1915 crop?

A. They have in this neighborhood.

Q. And you have on this land?

A. No, I haven't farmed on this land before.

Q. Now you say thirty bushels would——?

A. Thirty bushels would be a fair average yield. It would be rather a small average.

Q. What would be a fair average? Instead of minimizing it, give it at what would be a fair average, to yourself and other people.

A. Of course farming varies so it is a very hard matter to state what is an average. Some farmers thresh as high as fifty bushels while others fell down to half of that.

Q. What would be an average between twenty-five and fifty?

A. Thitry-seven and a half.

Q. Well, that would be a fairer average than your thirty?

A. I think it would.

Q. Well, put it at a fair average and compute it on that basis?

1980 A. I figure it would be $288.75, net loss.

Q. On your barley?

A. Yes.

Q. Did you deduct from that computation all items of expense?

A. Yes, sir.

Q. That would have been required to market your crop?

A. Yes.

Q. At what price per bushel?

A. I figure sixty-five cents per bushel, less ten cents a bushel for taking care of it.

Q. Now, Mr. Schouweiler, I will call your attention to the fifteen acres of flax that you had destroyed by these flood waters in the year 1915 on these lands of yours. Do you know what the average yield of flax per acre on lands in the neighborhood of yours was that year, that were not affected by flood waters?

A. About ten bushels.

Q. Now, your entire fifteen acres were destroyed?

A. Yes, sir.

Q. Will you state to the Court, what your losses were on that portion of your crop for that year?

A. It would be $262.50 net loss.

Q. In computing your net loss, Mr. Schouweiler, have you taken into consideration and deducted from the value of the crops all items of expense that it would have been necessary to have incurred to market it?

A. Yes, approximately.

Q. Mr. Schouweiler, what other items of damage were occasioned to your lands by these flood waters in that year—that is actual, tangible damage?

1981 A. There is nine acres of trees on the claim.

Q. What kind of trees?

A. Box-elder and ash.

Q. What were their condition prior to the flood waters of that year?

A. They were thriving trees and since the water stood around——

Q. Thriving trees of what age?

A. Planted about thirty years ago.

Q. About what were their diameters at the butt?

A. They was trees probably that would average about five inches through the diameter on an average.

Q. At the ground?

A. Yes. Some were much larger, and some I guess were smaller—between five and six inches.

Q. How many trees were there that were destroyed by these flood waters?

A. I never paid no attention to that.

Q. Was there five?

A. They are planted about eight or twelve feet apart *a sacttered* over the nine acres—It is really ten acres but the railroad tract cuts off one acre.

Q. And they were all in a good, thrifty condition prior to these flood waters?

A. Yes, sir.

Q. What was the effect of these flood waters on those trees?

A. It has killed a great many of them from standing in the water.

Q. What proportion of them have been killed?

A. I can't tell. I never stopped to consider that—what
1982 percentage?

Q. Yes.

A. I would judge that twenty-five per cent of them were killed out.

Q. Were they of any value?

A. Why, they was some value.

Q. What was their value per acre?—You say there are nine acres of them—now assume there is two acres and a quarter of them killed—what were those trees worth to the farm?

A. Well, it is a kind hard to answer. I don't know what people value their trees at.

Q. What do you value yours at?

A. I would value them somewhere——

Q. How many cords of wood will they cut per acre?

A. I have no idea. I am no judge of that.

Q. What valuation do you fix on them as your loss by reason of their destruction?

A. I would consider the tree claim worth a hundred dollars an acre—that is a thrifty grove of trees.

Q. Then two and a quarter acres would be worth what?

A. $225.

Q. Anything else that you know of?

A. No, there is nothing else.

Q. Have you computed on the figures that you have given what your total losses were on that piece of land for the year 1915, occasioned by these flood waters?

A. No, sir.

Q. Will you compute the amount and state it to the Court?

A. $2633.25.

Q. That was your loss on this quarter section of land
1983 occasioned by these flood waters of the year 1915 was it?

A. Yes, sir.

Q. Your damage occasioned by it?
A. Yes, sir.
Q. Has any portion of that been repaid you by anybody?
A. No, sir.
Q. Now, Mr. Schouweiler, let me ask you this question: Is the wheat straw that you would have received from this ninety acres of wheat land of any value?
A. No, it wouldn't be of any value to me.
Q. You have no way of using it?
A. No, sir.
Q. Would it be of any value to sell?
A. No, there is no market here for the straw.
Q. Mr. Schouweiler, you were familiar with the condition of this land for cropping purposes in the years 1916 and 1917, were you?
A. Yes, sir.
Q. Tell the Court what its condition was with respect to being overflooded in those years?
A. In 1916 of course there was no way of getting onto the land owing to the fact there was too much water.
Q. It was overflooded in 1916 and you couldn't crop it?
A. Yes.
Q. Now, what crops if any were put in on it in 1916 that you know of that were harvested?
A. There were no crops put in that I know of in 1916.
Q. Now, with respect to the year 1917, what was its condition as to being overflooded?
A. The condition was so in 1916 that they was unable to plow it. They couldn't plow it in 1916 so they couldn't raise
1984 anything in 1917. I presume there was some put in here and there in 1917.
Q. Confine yourself to your piece of land. I am speaking with reference to your quarter, the condition of which, in 1916, was such, as I understand, that it couldn't be farmed at all?
A. No, sir.
Q. And what was its condition in 1917 with reference to being farmed?
A. I presume part of it could have been cropped in 1917. That is in late crops such as flax or corn.
Q. Do you know whether it was or not?
A. No, it wasn't. It wasn't plowed in the fall of 1916, and as a result there was nothing put in in the spring of 1917.
Q. Why not?
A. Owing to the flood conditions.
Q. Now you are a farmer yourself by occupation?
A. No, sir.
Q. This was land you hired farmed—this quarter section?
A. Yes, sir.
Q. What is generally known as the threshing season in this community, Mr. Schouweiler, commencing about what time and finishing up, in a general way, about what period?

A. About from the middle of August until the first day of October, I should judge.
Q. About six weeks?
A. Yes, sir, it depends on the condition of the weather.
Q. But generally speaking it runs about six weeks commencing about the middle of August?
A. Yes, sir.

1985 Q. Mr. Schouweiler, how long had you owned this quarter section of land up to 1916—how long did you own it previous to the year 1916?

A. I owned it in 1911, I think, 1910 or 1911, and then I sold it and it fell back into my hands in 1915.
Q. How long have you known this particular piece of land prior to the time you have owned it?
A. Ever since I came to the country.
Q. How long is that?
A. Some thirty-three years.
Q. Is it a piece of land that has been cropped from year to year since you have known it?
A. Why it was cropped—not all of it, until I got hold of it. I opened it all up.
Q. That was in 1911?
A. I think it was in 1910 or 1911.
Q. Has it been cropped every year since 1911 up to the year 1915?
A. Yes, sir.
Q. The whole quarter section?
A. Yes, sir.
Q. Was it all good farm land, capable of cultivation and crop production?
A. Yes, sir.
Q. And has it since you owned it been cultivated and produced crops every year up to 1915?
A. Yes, sir.
Q. All these different crops that you have enumerated?
A. Yes.

1986 Cross-examination.

By Mr. Palmer:

Q. What year did you come to Fairmount, North Dakota?
A. In the fall of 1884.
Q. That was the year of the founding of the village of Fairmount?
A. Yes, sir.
Q. The site of the village of Fairmount is the southeast quarter of Section 28, township 130, range 47, Richland County, North Dakota?

Mr. Pinkney: Objected to as not proper cross-examination.

A. I might say it is a part of the site. I think there is forty acres across the tract that belongs to the village plat.

Q. The land on which you state that you sustained these losses is the northwest quarter of section 22 of the same township and range?

A. Yes, sir.

Q. And this land lies one mile east of the village of Fairmount?

A. Yes, sir.

Q. That was taken as a tree claim from the government?

A. Yes.

Q. And it was taken as a tree-claim somewhere about the year 1880?

A. Well, I couldn't say as to that, I forget what year it was filed on.

Q. Was it all taken as a tree claim when you came to Fairmount in 1884?

A. I think it was.

Q. Do you know who took it as a tree claim from the
1987 Government?

A. I know the party, yes. John Anderson.

Q. Did the patentee ever move upon or occupy the land?

A. No, sir.

Q. Where did John Anderson, the patentee, make his home?

A. On the southwest quarter of 21, I think it is.

Q. How long did the patentee own this land, up to what year?

A. Well, I can't tell you exactly what year. I bought that land, but if my memory serves me right it was in 1910, I think.

Q. Did you farm the land in 1910—that is did you buy it at such a season that you farmed in that year?

A. If I remember right I bought it in September and farmed it the following——

Q. September 1910?

A. Well, I wouldn't say positively that it was 1910 because I don't know unless I go back to my papers. I farmed it or broke it up. That is it was seeded to timothy, a share of it, and a share of it never had been broke. That is it was raw prairie, and I opened it all up and the following year I had a crop on the whole of it.

Q. Your best recollection is that you bought it in September 1910?

A. Yes, sir.

Q. And farmed it for the first time in the season of 1911?

A. I think so.

Q. The season of 1911 was an exceptionally dry season, was it not?

1988 A. I am unable to say. I don't think it was as dry as it was this year.

Q. During the time this land was held by the patentee from some time prior to 1884 to the year 1911, what part of it had been broken up?

A. I think it was the west eighty.

Q. That is the eighty that is farthest from the Bois de Sioux river?

A. Yes, sir.

Q. Was the entire west eighty broken up prior to 1911?

A. I think it was.

Q. Do you know what year it was broken up first?

A. No, I couldn't say. He must have had it opened earlier owing to the fact that the trees are on the eighty and he naturally wouldn't plant trees in prairie sod.

Q. Have you any personal knowledge of any of this quarter section having been broken up and cropped prior to 1911?

A. Yes, sir.

Q. Are you able to state more definitely the years in which it was broken up and cropped prior to 1911?

A. Well, I can't now name the year, and I remember that Mr. Anderson himself farmed it, and I remember later on that he had a renter on the home place that farmed the tree claim in connection with the home place.

Q. Are you able to state how many seasons prior to 1911 any part of this land was broken up and cropped?

A. I couldn't say if it was farmed every year or not, but there was a good many years it was farmed to my knowledge, but I wouldn't say it was farmed every year.

Q. How many years prior to 1911 was any of it farmed 1989 or any of it cropped?

A. I couldn't tell you—do you mean by cropping—tame hay?

Q. No, I don't.

A. Just raising grain?

Q. By cropping I mean raising of grain.

A. Yes.

Q. Had any grain been raised upon this land in the year 1910?

A. I think not. I think it was seeded down to tame hay.

Q. Can you state any more definitely the length of time which the land that had been cultivated had been seeded down prior to your acquisition of it?

A. I couldn't give you the exact years, but I would judge two or three years prior to the time I bought it.

Q. Going back then some two or three years prior to your acquisition of the land, from then back how many years have you a personal knowledge that any of it was cropped in grain crops?

A. I couldn't state the number of years, but it was cropped for a good many years prior to the time that I bought the land, but just what years I am unable to state.

Q. Some years it was cropped and some years it wasn't?

A. That is my recollection.

Q. Why wasn't this tillable portion cropped each year?

A. Well, I am unable to say. It wasn't on account of high water though the country where the farmers had too large an acreage and didn't get their fall plowing done and the following year it wasn't cropped.

Q. I would judge from your testimony that this is ex-
1990 ceptionally good land?

A. Yes, sir.

Q. It appears to be land which pays about fifty per cent on the investment?

A. In some years.

Mr. Pinkney: Objected to as argumentative and I object to the form of the question, and not proper cross-examination.

Q. You said that the failure to crop this land each year wasn't due to the wet conditions?

A. Not prior to 1911, or prior to the time I got it, that is that that was under cultivation.

Q. Will you state or are you able to state any other reason why it wasn't cropped each season?

A. No, only as I stated that owing to being unable to plow it some years I presume it escaped from being planted to crops. And then it was seeded down too in later years to tame grass.

Q. Do you know the reason why the owner was unable to plow and cultivate this land?

A. No.

Q. Was any part of the east eighty of this quarter ever broken up prior to your acquisition of the land?

A. I don't think so.

Q. Do you know any reason why this east eighty was never broken or cultivated?

A. Why no, only a general way. Mr. Anderson was a man without family, and I always figured that a half section of land was more than he could farm.

Q. The east eighty was excellent, tillable farm land during all of that period?

1991 A. I wouldn't say it was every year.

Q. What proportion of the years was it not?

A. In the spring of the year when the river got out of its banks the water got on to it.

Q. What proportion of the years was it not? Can you answer that question any more definitely than *than*?

A. In the first place the land near the river, the east eighty wasn't under cultivation and if it had been under cultivation I presume there was seasons when the water would have interfered with putting in the crops.

Q. Now I ask you what proportion of the season was the overflow from the river so high as to interfere with the cultivation of the east eighty of this land?

A. I don't think there was over five years while I lived in the county, but what they could have farmed that.

Q. Will you state as nearly as you can from your recollection what years those were?

A. I should judge it was the spring of 1888, the spring of 1897 and the season of 1906 or 1907, and then 1915 and 1916. Not 1915.

The spring of 1915 was dry, I think, but the springs of 1916 and 1917.

Q. At all other years then within your knowledge there was no reason why this entire quarter section could not have been cultivated and cropped?

A. No, sir.

Q. Is that what you mean to testify?

A. Yes, sir.

Q. Then your testimony, Mr. Schouweiler, is that here was a quarter section of excellent, tillable farm land lying within one mile of this village of Fairmount that was cultivated only a small
1992 portion of the years from 1884 to 1911?

Mr. Pinkney: Object to the form of the question as argumentative.

A. And then only the west eighty of it?

Mr. Pinkney: Object to the form of the question as being highly argumentative and improper. His testimony speaks for itself.

A. I wouldn't swear positively that it was the west eighty. He might have had a hundred acres under cultivation, and it may have been a little more and may have been a little less, but the strip that wasn't under cultivation I think was on the east side of the quarter.

Q. Otherwise your testimony is as I have stated?

A. Yes.

Q. In the year 1910, at the time you bought this land, what was the fair market value of good tillable farm land, lying within one mile of the village of Fairmount?

Mr. Pinkney: Objected to as not cross-examination. We didn't ask the witness anything about the market value of the land. Our inquiry is solely as to the question of damages sustained by the owner of the land by reason of these flood waters.

A. Fifty dollars an acre, land that was in the condition that that was, not improved by buildings.

Q. Since you have been in Fairmount you have been engaged in the banking business and also the mercantile business?

A. Yes, sir.

Q. And you have bought and sold farm lands and made loans upon them and transactions of that kind?

A. Yes, sir.

1993 Q. And you state that lands such as those within one mile of Fairmount in September 1910 had a fair market value of Fifty dollars and acre?

A. Yes, sir.

Q. And you paid for this land $31.25, Mr. Schouweiler?

A. Yes, sir.

Q. That is you paid $5,000 for the quarter section?

A. Yes, sir, and I would like to add. I sold it to a Land concern and they sold it for $65 an acre the following year, so it is pretty hard to place a value on it. That is on any of the lands. While

$50 I claim is a fair value—that is what I got and I thought it was what it was worth, but it seems that the party that bought it from me —a local party—they seen more money in it and they bought it from me and resold it for $65 an acre.

Q. Was Mr. Anderson, the patentee from the government still living here in 1910?

A. No, sir.

Q. How long since he lived here?

A. I am unable to state just when he left here. He must have left shortly after 1900, or 1902 or 1903, somewhere along in there, I would judge.

Q. In 1911 you state that you broke this land all up and put it into crop?

A. Yes, sir.

Q. Did you make a profit on the crop that year of some $2,400 or $2,500?

Mr. Pinkney: Objected to as incompetent, irrelevant and imterial, not proper cross-examination.

A. I put in one crop there after I had it that netted me something like twenty-five or six hundred dollars.

1994 Q. What year was that?

A. That was 1912 or 1913. I forget which. It might have been 1911. I can't state exactly. I could tell if I would go and look up the date of my deed.

Q. That was about fifty per cent of your investment?

A. Yes, sir.

Q. Now I apprehend then in 1911 you must have had a very substantial profit on your investment?

A. Yes, sir.

Q. You think you make as much as $2,000?

A. I think it figured up to about $2,500.

Q. In 1911?

A. I think it was 1911 or 1912. It was the second crop.

Q. How much profit did you make on the first crop?

A. I can't tell you. Of course you only remember those things when they come in abundance. When you have a medium crop you don't remember it, but I venture to say I made a profit on it—the crop before the profitable crop I might put it, because I had wheat and flax that year, and I know it was a fair crop.

Q. You don't recall then——?

A. Just how many dollars I couldn't say.

Q. Do you recall the percentage, upon your investment, of profit that you made in the year 1911, the first year that you cropped it?

A. No, I couldn't tell you.

Q. Would you say that it was large?

A. I would say it was better than ten per cent.

1995 Q. Well, but Mr. Schouweiler, there is a very great diversity between ten per cent and fifty per cent. Do you think in 1911, that you- profit was as low as 10 per cent?

A. I wouldn't say, but I would say it was ten or over. Oh, it was

better than ten per cent, I am satisfied of that, but the crop that I spoke of, that was an exceptionally good crop.

Q. That was the 1912, crop you think?

A. 1911, or 1912, I couldn't say which.

Q. 1913?

A. I didn't put it in. I had sold it then to the land company.

Q. You sold land that was paying you about fifty per cent on your investment?

A. Yes, sir.

Q. You think in 1913, you didn't crop it?

A. No, if I remember right I didn't crop it.

Q. Now you remember this year 1912, particularly because you got a net profit from the land of about twenty-five hundred dollars which was a remarkable year and a remarkable profit?

A. Yes, sir.

Q. Was the crop raised in this locality that year exceptionally good?

A. I wouldn't say, *I* was a fair crop, I think, above the average. A little above the average.

Q. You sold this land in 1913, which had paid you some fifty per cent on your investment the year before at $50 an acre?

A. Yes.

Q. What part of the year 1913, did you sell it?

A. In July, I think.

1996 Q. Did the purchaser farm it that year?

A. No.

Q. Who did?

A. I think I put the crop in.

Q. How did you sell it—with the crop on?

A. Yes, sir.

Q. And the $50 an acre included the crop?

A. Yes, sir.

Q. Were the crop conditions that season particularly good?

A. I think so. *I*t think it was fair.

Q. Did you sell the land for cash or deferred payments?

A. Deferred payments, some cash.

Q. How much cash?

A. I think $2,000.

Q. The deferred payments of $6,000 drew what interest?

A. Six per cent.

Q. So that the annual interest was $360?

A. Yes, sir.

Q. Did the party to whom you sold the land have a good crop that year?

A. I think so.

Q. Did he realize a profit of somewhere in the neighborhood of what you had been realizing?

A. I can't tell you. I didn't pay any attention to the crop. The first crop he put in there I didn't pay any attention to it.

Q. You don't know then whether your purchaser had a good crop that year or not?

1997 A. No, I don't.

Q. Was the crop when you sold it in as good condition and of as great promise as it was in 1915?

A. I am unable to say. The year I sold it you mean?

Q. Yes.

A. I think so.

Q. Now the succeeding year 1914, who farmed it?

A. The purchaser farmed it.

Q. Did he live on the land?

A. No, he farmed it through hired help. I think he lived in Illinois.

Q. Then, as I understand it, this quarter section has never had any improvements placed upon it?

A. No.

Q. No buildings?

A. No.

Q. No fences?

A. None whatever.

Q. No orchards?

A. No, sir.

Q. Not even a granary?

A. No, sir.

Q. Now, what were the crop conditions there in the spring of 1914?

A. I can't tell you. I didn't pay any attention to it after it passed out of my hands.

Q. Do you know whether any crop at all was put in in 1914?

A. I think there was a crop put in.

Q. Do you know what proportion of the land was put into crop that year?

1998 A. If I remember right it was all cropped.

Q. So that your purchaser, you think, had it all in crop in 1914?

A. Yes, sir.

Q. Do you know what amount of crop he raised in the year 1914?

A. No, I do not.

Q. You are unable to say whether he raised any crop at all in 1914 on this land?

A. I am satisfied he had a crop, but I have no idea what kind of a crop he had.

Q. Now you say the purchaser was unable to pay his interest in 1914 and you cancelled his contract and took the land back?

A. Yes, sir.

Q. When did you do that?

A. I think that was foreclosed during the year 1914. That is my recollection, and I cropped it in 1915.

Q. Did you foreclose the contract in such season of 1914 that you got the crop?

A. No, in 1915.

Q. No, 1914, the purchaser got the crop?

A. Yes, sir.

Q. And he was unable to pay?
A. Well, I don't know that he was unable, he didn't pay.
Q. He didn't pay this $360 interest on his deferred payment, Mr. Schouweiler?
A. Mr. Anderson had the first mortgage of $3,000. He might have paid him, but he didn't pay me my interest on the $3,000 mortgage I had, so I foreclosed for the interest.
1999 Q. And the purchaser lost the land?
A. Yes, sir.
Q. And likewise lost his $2,000?
A. I presume so.
Q. You were——
A. I am unable to say how much money the purchaser put in. I sold the land to the land company, but the papers are given from the man that bought the land back to me, that is my mortgage. Now what the purchaser paid the land company in cash I am unable to state.
Q. You were paid $2,000 in cash?
A. From the land company, yes, sir.
Q. That was lost to the purchasers whoever they were?
A. Well, that depends on how much money the purchaser paid.
Q. Did you return the $2,000 to the purchaser?
A. The land company bought the land from me, and paid me $2,000 and they resold it and what the purchaser paid for the land I am unable to state.
Q. Did you repay the $2,000 to the land company?
A. No, hardly.
Q. Did you or did you not?
A. No, sir.
Q. Do you know of any reason from your own knowledge of this land why land that had paid you fifty per cent on the investment in the year 1912, did not yield sufficient returns in 1913 and 1914, so that the purchaser could pay $360 interest but lost at least the sum of $2,000 and let the land go back?

Mr. Pinkney: Object to the question as assuming a state of facts not testified to by the witness and as highly argumentative,
2000 calling for an opinion of the witness.

A. I have no way of telling the reason. I have no way of knowing, I think there was ample crop to pay the interest but he refused to turn it over. That is my opinion.
Q. Your understanding was *the* the purchaser had got pretty sick of his bargain?
A. No, sir, that is not my understanding.
Q. Your understanding wa*y* that he was well satisfied with his purchase?
A. Why, yes.
Q. Then I ask you again do you know any reason why he defaulted in his interest and let the land go back, and lost the cash he had invested in it?
A. I am unable to state why he didn't pay the interest.

Q. Nor why he left the land go back?
A. Same reason.
Q. You haven't given any reason.
A. I am unable to state why he refused to pay the interest and I am unable to state why he let the land go back.
Q. In 1915, you had the land back and you put it into crop?
A. Yes, sir.
Q. Do you know what is the average yield of grain crops in Richland County and vicinity in the year 1915?
A. I know in the vicinity but not of the county.
Q. What was it in the vicinity of Fairmount?
A. I think it would figure out twenty to twenty-two or three bushels.
Q. That is an exceptionally good crop?
A. Yes, sir.
Q. Above the average?
2001 A. Yes.
Q. So your opinion is that in the year 1915, there was in the farming territory surrounding Fairmount, North Dakota, an exceptionally good crop yield?
A. Yes, sir.
Q. What were the conditions during 1915 to the best of your recollection as to rainfall?
A. Rather excessive.
Q. The rainfall for 1914 Mr. Schouweiler, was above the average somewhat, was it not?
A. I don't think so.
Q. Is it not true that this land in question was extremely wet through the season of 1914, particularly during the month of June?
A. Not to my knowledge.
Q. You didn't visit this land which lay within one mile of Fairmount during the crop season of 1914, to observe whether the conditions there were wet or not?
A. Why, I observed the general condition, I presume if it was wet here, it was wet down there.
Q. But you don't think it was an exceptionally wet season?
A. No, sir.
Q. 1915 was an exceptionally wet season, was it not?
A. Yes, sir.
Q. And this land of yours would have been under any conditions exceptionally wet during that season?
A. No wetter than the balance of the land.
Q. It would have been no wetter than land which lay remote from the river?
A. No.
2002 Q. There is no rise in the water of the river in an exceptionally wet year?
A. There is a rise, certainly. The bed would naturally be full in wet seasons when it would be practically dry in dry seasons.
Q. Now the spring of 1915 was a comparatively dry spring so that you were able to put in the crops upon this land?

A. Yes, sir.

Q. What time that spring did you put in these crops?

A. I think it was put in in April and possibly a part of May. The flax probably was put in the first days of May.

Q. Is it not true that beginning with the month of May the rainfall steadily increased through May, June and July, 1915?

A. I am unable to state as to that. It is quite a while ago, and furthermore on June 15th I left here and was away for about two months, so I couldn't swear as to that.

Q. Then you are unable to state why it was these lands of yours were so excessively wet in the season of 1915?

A. Well, when I returned here about the latter days of July or the first of August there was water standing on the land and the river was out of its banks.

Q. But as to what the rainfall had been through the months of June and July?

A. I am unable to state.

Q. As to whether or not you would have had an average crop in 1915 upon this land under any circumstances you wouldn't undertake to say, would you?

A. I don't know just what you mean by under any circumstances.

Q. In view of the excessive rainfall during that season?

2003 A. Yes, I would unless the hail would have taken it or something of that nature.

Q. In other words, if the hail had not taken it and the water had not taken it and the season had been right and you would have got a crop you would have got a crop?

A. Sure, on the portion that was out of water I got a crop. Cut five acres and threshed it.

Q. You got eleven bushel- to the acre?

A. Yes, but it was standing in the water for a long time and didn't fill up the way it should have—there was a shrunken berry.

Q. Now you figure your profit here $2,408?

A. Yes, sir.

Q. The very highest profit that you know of ever having been made upon that land in its history?

A. No, that is the second.

Mr. Bronson: That question is objected to where he used the word "profit." You don't take into consideration that the plowing and the cost of the seed and putting it in and all that comes out of this $2,500. We figured in the question propounded the "loss."

A. We just took out the threshing, but there is a lot of expense before you get to the threshing.

Q. But the exceptional year of 1912 you made a profit of approximately $2,500?

A. Well, I wouldn't say the net return was $2,500. From that you should deduct plowing and seeding and seed and so forth. I wouldn't say that was a net profit.

Q. But you figure the returns for this year 1915 just as
2004 great as those in 1912?

A. Well, it practically figures out about the same thing, yes.

Q. And the year 1912 was an exceptionally good year as to crop returns?

A. I don't know if it was the 1911 or 1912 crop. I am unable to state. I can look it up of the court wishes.

(Adjournment taken until 1:30 P. M.)

2005 November 5, 1917, at 1:30 p. m.

B. W. SCHOUWEILER, being recalled for further cross-examination, testified as follows:

Examined by Mr. Palmer:

Q. Are you able to state now more definitely the date you bought this land?

A. Yes, sir.

Q. You may do so.

A. Oct. 12, I think it was 1910.

Q. You are able to state now what year it was that you got the exceptionally good crop?

A. 1912.

Q. When you got a profit of approximately $2,500.00?

A. 1912.

Q. Are you able to state now more definitely the profit that you made from the operation of this land in the year of 1911?

A. In 1911 I had about 80 acres, 70 or 80, got 840 odd dollars. That was on timothy sod.

Q. With reference to the trees which you say were destroyed in 1915 and 1916, I understand you to say that you figured 2¼ acres at $100 an acre?

A. Yes, sir.

Q. On what basis did you estimate that damage?

A. Well, I based it, that the naked trees were worth at least $100 an acre.

Q. For what purpose?

A. Timber, shelter.

Q. Do you think that the wood from these trees is worth $100 per acre.

2006 A. No, I do not.

Q. What do you estimate the timber then to be worth?

A. I wouldn't say, I couldn't tell; I have no idea what it would be worth.

Q. Was the wood of any of these trees destroyed?

A. No, not for fuel, that was not destroyed.

Q. What was the variety of the trees that were destroyed?

A. Box elder and there is a few cottonwood and some ash.

Q. They were largely box elders that were destroyed?

A. Yes the majority was box elders.

Q. What is the height of those box elder trees that were destroyed?
A. I would judge they averaged about 20 feet.
Q. What was the average diameter of the butts of those box elder trees that were destroyed?
A. I would judge between 5 and 6 inches diameter.
Q. Isn't it true that those box elder trees in this grove that you have described on this land are mere shrubs?
A. No, sir.
Q. About 8 or 10 feet in height and very dwarfed and scraggly looking points of trees?
A. There are more or less owing to the fact that they have been neglected in being trimmed up.
Q. This grove was merely set out by the patentee for the purpose of holding the land as a tree claim?
A. Yes, sir.
Q. It never had any attention after it was set out by way of cultivation of the trees, the trimming of the branches or attention to them so that they would grow straight or anything of that kind?
2007 A. Why, I think Mr. Anderson while he was living here, that he kept them trimmed up and cultivated; and; furthermore, I would state that the trees, if he charged his actual time up, would cost him more than $100 an acre.
Q. Cost him more than $100 an acre for the 9 acres?
A. For the 9 acres, yes, sir.
Q. That is what he got the land for, wasn't it?
A. I presume so.
Q. Was for setting out those trees?
A. Yes, sir.
Q. Then you think that you actually lost by the water coming up on those trees $225.00, Mr. Schouweiler?
A. Well I wouldn't state it that way. I would say that there is a damage there of $225.00 to that tree claim.

Mr. Pinkney:

Q. The tree claim or the trees?
A. Yes, sir, the trees.

Mr. Palmer:

Q. In other words the land was worth $225.00 less on account of the injury to those trees by the water?
A. Yes, sir.
Q. And on account of the water coming up and standing on the land in 1915 and 1916 the land was worth in the spring of 1916 considerably less than it was prior to the advent of the waters?
A. Yes, sir.
Q. How much less?
A. Why, a man that would know the conditions probably would make it 90% less.
Q. What?

A. You might say that a man who knew the conditions might make it 90% less.

Mr. Pinkney:

Q. He is speaking with reference to your land?

2008 A. Yes, but a man that didn't know the conditions and saw it now might not value it less than we valued it in 1914.

Mr. Palmer:

Q. I didn't ask you, how much you might be able to fool a man on it, Mr. Schouweiler; I asked you the diminution in the fair market value of that land from 1913 when you sold it to the season of 1916 when it had water on it?

Mr. Bronson: Objected to as merely repetition already answered by the witness in his examination at St. Paul.

A. I don't think I can answer the question. I can give you my reason. You take people that are acquainted with the condition and people who are not acquainted with the condition would place an entirely different valuation.

Mr. Pinkney: He is asking your's, not somebody else's.

A. Mine would be probably 75 per cent less, I wouldn't give a man within 75 per cent of what he gave me.

Mr. Palmer:

Q. Then you think that the land was worth, when you sold it in 1913, $50.00 an acre?

A. Yes, sir.

Q. And in 1916 it was not worth more than $12.50 an acre?

A. Not to me, no sir.

Q. I am asking you about the fair market value of that land. It might be worth $100.00 an acre to a man that wanted to raise ducks, it might be worth $10.00 an acre to a man who wanted to raise apples, but I am asking the fair market value in 1916.

A. I can't give it to you, I have no idea what the fair market value would be. It depends on who would be the prospective buyer to get a value.

Q. Is there any means by which you can form an estimate of the market value of the land in 1916?

2009 A. No, sir, there is not.

Q. Did you sell that land again in 1916?

A. That is, the land company took it off my hands for the reason that they had bought it previous and they did not want it to fall back into my hands.

Q. You state that it did fall back into your hands and that you put in and owned the crop on that land in the year of 1915?

A. Yes, sir.

Q. You don't undertake to testify, Mr. Schouweiler, that you took the crop from some other person's land that year, do you?

A. That was the season of, while the foreclosure proceedings were going on.

Q. Now, I ask you, did you again dispose of that land in 1916?

A. The land company took it off my hands in 1916.

Q. At what value did the land company take it off of your hands in 1916?

A. The same as they did when they bought it at first.

Q. What was that value?

A. $50.00 an acre.

Q. $50.00 an acre?

A. Yes, sir.

Q. And since you sold it to the land company in 1916 at $50.00 an acre has it come back into your hands?

A. No, sir.

Q. Did it have water standing upon it in 1916 when the land company took it off of your hands at $50.00 an acre?

A. They took it off of my hands, I think it was in March, and I don't know what the conditions were down there then as to water. That is before the spring waters come on.

2010 Q. It had had this water upon it in 1915 and the crop had been nearly destroyed?

A. Yes, sir.

Q. Where is this land company located?

A. Their headquarters are in St. Paul, originally their headquarters was here.

Q. At Fairmount?

A. Yes, sir.

Q. Did they know the conditions when they took that land off your hands in 1916 at $50.00 an acre?

A. I think they did.

Q. And you say that they sold it in 1913 immediately after they purchased it from you at $50.00 an acre——

A. That was in 1912.

Q. In 1912?

A. Yes, sir.

Q. Then you sold it to the land company in 1912 at $50.00 an acre?

A. Yes, sir.

Q. What season of the year?

A. I think it was in July.

Q. But you had the crop of 1912?

A. The crop went with the land, I got part of the crop as finishing out payment. The land company took care of the crop.

Q. What year was it that you got this bumper crop?

A. That was the year, that is the bumper crop. The crop did not entirely go to me but the crop that was raised there that year figured out to be about $2,500.00 net above all expenses. That is, above the harvesting expenses.

Q. You didn't know that then when you sold it?

2011 A. No, certainly not.

Q. You sold it in July?

A. I think it was in July.

Q. And that is the year that the crop went with the sale as you testified before?

A. Yes, sir.

Q. And after purchasing it from you in July 1912, at $50.00 an acre, how soon did the land company sell it to some individual?

A. I don't know, I am sure, but it was shortly after.

Q. Was it that same season that they sold it to an individual at $65.00 an acre?

A. That is what I understand.

Q. How far is it from the Bois de Sioux river to the eastern boundary of this land?

A. I am unable to say.

Q. About how far?

A. I should think about 100 rods, possibly more. Your plat will show you how much land there is between the river and that quarter, I presume.

Q. There is some of the land in the northeast quarter of section 22 that lies between your land and the river; is that land higher than your land, the land that lies adjacent to the river?

A. I think not.

Q. Is it lower?

A. I would judge so.

Q. Is the east eighty of this land in question what is usually designated as swamp land or marsh land?

A. No, sir.

2012 Q. Is it not so designated upon the government plat survey?

Mr. Pinkney: We object to that as not the best evidence of that fact, not cross-examination of that fact if it is a fact.

A. I think not.

Mr. Palmer:

Q. Have you ever looked to see if it is so designated?

A. No, I never looked.

Q. What would you say as to its comparative elevation with the land westerly of it?

A. A gradual rise as you go west.

Q. Then this land is lower than the land westerly of it, substantially so?

A. No, not substantially.

Q. Somewhat?

A. Somewhat, yes, sir.

Q. What is the character of the Bois de Sioux river as it passes through this land immediately east of this as to having any banks?

A. I would judge that the banks would hold around 8 to 10 feet of water there at the railroad bridge before it spreads out onto the land.

Q. That is, at the Great Northern railroad bridge?

A. No, at the Soo where we was, if you remember.

Q. And from the Soo railroad bridge passing on northerly to the Great Northern railroad bridge, is it true that the Bois de Sioux river is a mere depression there in the prairie?

A. At the Great Northern?

Q. To the Great Northern.

A. No, I think as you go up north the banks get higher,

2013 that is, the channel is deeper.

Q. From the Soo railroad bridge, near the southern extremity of your land, to the Great Northern railway bridge, the northern extremity, isn't it true that the Bois de Sioux river is a mere depression there in the prairie?

A. Well, no, I would judge the bed is some 8 to 10 feet deep.

Q. You think it is 8 to 10 feet deep?

A. I think so.

Q. Has it any well defined banks, do the banks come up from the surrounding land at all?

A. The banks are no higher, you might say, than for forty or fifty rods back, that land lies on a level or nearly so.

Q. So that as soon as the river fills the water merely spreads out on the surrounding land?

A. Yes, sir.

Q. And gradually covers the surrounding land until it reaches the higher land sufficiently——

A. The higher the river gets the further it reaches out, of course, it spreads.

Q. You state that this past season, 1917, there has been no crop raised upon this land?

A. No, not on this quarter.

Q. Has there been a crop, a grain crop, raised on that land easterly of it between this land and the Bois de Sioux river?

A. I think there was.

Q. Is there any reason then except neglect that there has not been a crop raised on this land in question, this season?

A. Well I presume you could have raised corn and flax, late crops, you couldn't plow it in the fall, it had to be plowed in the spring in order to raise anything.

2014 Q. But so far as the water is concerned it was just as dry this season as it ever was?

A. No, oh no; you couldn't have plowed any of that soil until the first of June or after.

Q. What is its condition at the present time?

A. Dry.

Q. Is it being plowed, the entire quarter?

A. I presume so; I understand there was eighty acres of it plowed in July. I haven't been down lately to know if it was plowed or not.

Q. You state that no part of this damage of $2,408.25 has been paid to you?

A. No, sir.

Q. Have you any reason to think that it will be paid to you?

A. Yes, sir.
Q. What reason?
A. Well, I think that those people that flooded us ought to be made to pay the damage.
Q. To you?
A. Yes, sir.
Q. And that is what you expect?
A. Certainly.
Q. Whom do you mean when you say, the people who flooded you?
A. Well, I mean the state of Minnesota.
Q. Your idea is that the State of Minnesota flooded you and that it should pay this $2,408.25 to you?
A. To me or my attorney.
Q. And you expect that to be recovered in this litigation?
2015 A. Yes, sir.
Q. Who are your attorneys?
A. Mr. Pinkney, and the Deputy Attorney General.
Q. Of North Dakota?
A. Yes; and Lind and Boutelle.
Q. Then all of the attorneys for the complainant, the State of North Dakota represent you in this litigation, Mr. Schouweiler?

Mr. Bronson: That is objected to as improper cross-examination.

A. That is the way I look at it.

Mr. Palmer:

Q. That is your understanding of the matter?
A. Yes, sir.
Q. And you have contributed, have you not, a sum of money to the expense of carrying on this litigation on the part of the complainant, the State of North Dakota?
A. Yes, sir.
Q. And you have done so with the expectation and understanding that if damages are recovered by the State of North Dakota you will be compensated for this damage that you have suffered.
A. Yes, sir.

Redirect examination.

By Mr. Bronson:

Q. I will try not to repeat questions which will bring out testimony that you have testified to in St. Paul; as I understand, and it is a fact, is it not, that you were a witness before the Commissioner at St. Paul?
2016 Q. You are a resident and citizen of the State of North Dakota?
A. Yes, sir.
A. Yes, sir.

Q. And have lived here some thirty-three years?
A. Yes, sir.
Q. Counsel has asked you several questions about your interest in this case and about the prosecution in this case and what you expect to recover in case the State of North Dakota recovers. I will ask you to state whether you do not expect the State of North Dakota in its Sovereign right to protect you as a citizen of North Dakota?
A. Yes, sir.
Q. Counsel has asked you some questions as to the attorneys who represent you in this action?
A. Yes, sir.
Q. And you have mentioned Mr. Pinkney and Mr. Boutelle who are of counsel of the State of North Dakota as you understand it?
A. Yes, sir.
Q. You do not pretend to know anything about the relations existing on the part of the State of North Dakota in calling in counsel, Mr. Pinkney and Mr. Boutelle, do you?
A. None whatever.
Q. And you know that some of the citizens here on account of damages that they had sustained made some contributions?
A. Yes, sir.
Q. For the purpose of engaging the action of the State of North Dakota in its sovereign capacity against the State of Minnesota?
A. Yes, sir.
Q. And you also know that efforts were made by the legislature of the state of North Dakota to take legislative action by the State of North Dakota in the way of contributing money of the
2017 State for that purpose.
A. Yes, sir.
Q. Now, without requesting you to repeat testimony that you testified to before at St. Paul, Mr. Palmer has asked you several questions concerning general conditions of this territory which you have heretofore referred to in your testimony as a flooded territory in years 1915 and 1916 and concerning which I have heretofore shown to you in your previous examination complainant's exhibit A, being designated in yellow as the territory that was damaged in 1915 and 1916, you have recollection of that, have you?
A. Yes, sir.
Q. Now, in that territory, this quarter section, northwest section of 22, is the land you have testified to concerning today?
A. Yes, sir.
Q. Now, if I understand your testimony correctly, in the years 1915 and 1916, this land, the northwest quarter of section 22 was flooded with water?
A. Yes, sir.
Q. And the crops that were on this land in 1915 were destroyed?
A. Yes, sir.
Q. And in the year 1916 no crops were raised on this land?
A. None whatever.
Q. And that none were raised in the year 1917?

A. No sir.

Q. So that apparently there is a period of three years, 1915, 1916 and 1917, when there were no crops of any kind, shape
2018 form or description raised on this land, harvested or threshed on this land except the five acres you have mentioned?

A. No, sir.

Q. In the years you have lived here from 1884 up to 1915, when these flood conditions were apparent, I will ask you to state whether or not you have ever observed as you had opportunity to observe, in all the years you have lived here any flooded condition in that shape or extent or character existing over and upon those lands.

A. Not in the shape of those certain months in the year.

Q. I will ask you also to state whether or not during the years you have lived here, as far as this land is concerned, and that is from the year 1884 up to the year 1915, there has ever been a season as you observed and as you had an opportunity to observe when this land was not capable of cultivation and farming operations for cereal crops or other crops up to the year 1915?

A. It has always been in shape to crop except those two years.

Q. Has there ever been a year during the years you have lived there from 1884 up to this year of 1915 when that land you have described, northwest quarter of section 22 was not capable of being farmed in the proper sense of the word?

A. No, sir.

Q. By reason of high water conditions?

A. No, sir, there never has been any seasons but what you could have cropped it except the years 1917 and 1916.

Q. And 1915?

A. 1915 we cropped it but we lost it.

Q. You have mentioned the fact that some years this land
2019 had some flood waters come upon it in years other than the years 1915 and 1916 and 1917, and you have testified in St. Paul somewhat concerning the year 1897 particularly?

A. Yes, sir.

Q. As the season when there were particularly high flood waters on account of considerable winter snows during the previous season of the winter. I will ask you to state whether or not concerning that year, the year 1897, in the spring, the high waters that did exist there, how long did they stay?

A. Not to exceed ten days, I don't think.

Q. And was or was not that land capable of being farmed that year?

A. I think it was.

Q. And it was dry that year?

A. Of course it was not all under cultivation.

Q. I will ask you the question whether that water went off and that land that season was capable of being farmed?

A. Yes, I think it could be, or it was.

Q. I will ask you the question whether or not this land, the northwest quarter of 22, has any permanent marsh area within its borders?

A. No, sir.

Mr. Pinkney:

Q. On your cross-examination, you spoke of the east eighty of this piece of land being wet at times, the east half of 22, as I understood you, now, what time of the year do you have reference to, at any particular time?

A. In the spring of the year.

Q. In the spring of the year only?

A. Yes, sir.

Q. During those springs that you have referred to, did this land afterwards dry off so as to be susceptible of cultivation

2020 and crop production for the years?

A. Yes, sir; well, the east eighty was not under cultivation but there has always been a hay crop there and always mowed.

Q. I haven't asked you whether there always has been crops or not, I am asking you if it was susceptible of cultivation?

A. Yes, sir.

Q. There wasn't any water to prevent it being cultivated?

A. No, sir; what I mean is if there had been water we could have made hay.

Q. You also answered counsel on cross-examination you regarded your land, as he said to you, it was an exceptionally good piece of land. Tell the court what kind of a piece of land it is as respects the quality of the soil as compared with these other lands that were cultivated in 1915 and 1916 and 1917?

A. The quality is the same as the other land.

Q. They are all of a general character and soil?

A. Yes, sir.

Q. And susceptible of the same crop and production?

A. Yes, sir.

Q. Same class and character of crops?

A. Yes, sir.

Q. You stated on your cross-examination that you recollected the rainfall in 1915 was exceptionally heavy; have you any recollection upon that point at all?

A. No, only as I see the water standing in the Bois de Sioux.

Q. Then you judge of the fact of rainfall from the amount of water that you saw in the Bois de Sioux?

2021 A. Yes, sir, and what people told me when I came back.

Q. Personally you know nothing about it?

A. No, sir, I do not.

Q. These valuations that you have given as to your crop that was destroyed on this quarter section of yours by these flood waters in the season of 1915, as I understand it, is the valuation of those crops at the time they were destroyed standing in the field?

A. Yes, sir.

Q. You have during your long years' residence become familiarized with the methods or basis of rentals, have you not, on what terms farms are rented in this locality.

A. Yes, sir.

Q. What is the method of renting them as a rule?

A. The tenants do the plowing and cultivating and so forth and they get half of the crop and the owner of the land furnishes the seed, pays half the thresh bill and gets half of the crop; that is the general rule.

Q. How with respect to the delivery of the crops produced into the market?

A. Many times the crops are delivered in the elevators at those figures.

Q. Those are the terms you rent lands on as a rule?

A. Yes, sir, unless the distance is too great away from the——

Q. I am talking about the lands in this area?

A. Very seldom a charge is made for delivery.

Q. The rental terms includes delivery of the landlord's share of the crops?

A. Yes, sir.

2022 Q. Has that been, you might say, the almost universal rule of renting lands since you have been here?

A. Yes, sir.

Q. Mr. Palmer, on his cross-examination asked you as to the value of these flooded lands previous to the time the flood waters appeared here in 1915 and up to the present time, or since they appeared here with the menace of future floods. Do you know of any of those lands having been sold since these floods first showed up?

A. Yes, sir, there is two certain tracts that have been sold since the floods.

Q. Were they included in the flooded area?

A. One quarter was and one was adjoining.

Q. I am asking you about nothing except those lands included in this flooded area.

A. Well, Mr. Pinkney, what I am trying to get at one certain quarter that adjoins the flood and the other quarter was partly flooded, as I understand it.

Q. If you don't know, say you don't know and don't give anything that you don't know. I am asking you now with special reference to these lands that were flooded in the years 1915 and 1916; do you know of any of them having been sold since those floods first occurred?

A. They have been as I stated, while I was away, you know we had high water mark and I couldn't say that the water was on those lands or not, they had receded some, I think, at the time I got back, but I understood from the neighbors——

Q. Somebody else told you?

A. Yes, sir.

2023 Q. I don't want anything that anybody else told you I want to know what you know.

A. I don't know anything about it.

Q. Do you know of any market value they have now or have had at any time since they were flooded in 1915?

A. No, I do not.

Q. They did have a certain market value prior to the floods of 1915, didn't they?

A. Yes, sir.

Q. Are you able to tell the Court about — range the valuations were, taking into consideration the improvements and those without improvements previous to the floods of 1915? How did they range per acre?

A. Well, the only land that you might say has changed hands to my knowledge would be the quarter——

Q. Listen to my question and you won't answer something else. Read the question.

(Question is read by the reporter.)

In other words what I want to get at is the land sold at the highest price you know of and the general market value of the land?

A. What I am trying to get at is this land that was actually flooded——

Q. I am not asking you about the lands flooded.

A. You mean other lands; there is this one sold to my knowledge——

Q. I am not asking you about the sales at all, I am asking you as to the values.

A. Well, from $75 to $80 per acre in that flooded district.

2024 Q. Did you hear of any lands in that flooded district selling for more than that?

A. No, sir, there has been lands sold adjoining the flooded district for more.

Q. How much more?

A. As high as $107.00 an acre, the quarter east of town here.

Q. Which quarter was that?

A. That is the southwest of 21, I think, I understand that that land has been partly flooded, although I did not see it with my own eyes.

A. Are you familiar with the quality of improvements on that southwest of 21?

A. Yes, sir.

Q. What is the character of the improvements there?

A. The improvements are fair although nothing above the average. I would judge the improvements were probably $2,500.00.

Q. Is that the land that immediately adjoins the quarter section owned by Charles R. Pinkney?

A. Yes, sir.

Q. Right across the——

A. He has got the southeast same section.

Q. How does the quality of those lands compare with the southeast of 21, that is as to soil conditions and quality?

A. They are the same.

Q. How do the improvements compare on the two pieces of land?

A. Pinkney has no improvements on that.

Q. Has no improvements at all?

A. No, sir.

Q. But they are substantially of the same quality?

2025 A. Yes, sir.

Q. From $107.00 an acre down to about what price would you fix as the minimum price?

A. Well, that would be a minimum price around $90.00 possibly $95.00 in that neighborhood.

Q. And that applies, did it as to all those lands within this flooded area prior to the year 1915?

A. No, I wouldn't say it applied to all.

Q. What would you say as to the lower priced land within this flooded area?

A. There are farms that are not highly developed by improvements I would judge would be worth from $50.00 to $65.00 on a average.

Q. That is, the lands with poor improvements run $60 to $65 and those better run from $90 up to $100?

A. Yes, sir, that is the idea.

Q. In your daily business affairs, you have had more or less to do with these land transactions that have taken place from time to time over quite a number of years previous to 1915, have you not?

A. Yes, sir.

Q. And have familiarized yourself with the values through your daily transactions?

A. Yes, sir.

Q. Are you familiar in a general way with all this land included within this flooded area from the south Dakota line north to a point above Fairmount?

A. Yes, sir, in a general way.

Q. Did you see this quarter section owned by you in 1917?

A. Yes, sir.

2026 Q. Were you over it?

A. Yes, sir.

Q. What was the condition of the land there after the flood waters receded, what was its condition through the summer?

A. It grew up to weeds called cat-tails.

(Complainant's Exhibit 26 is marked.)

Q. Look at this photograph (Exhibit 26), purporting to be a photograph of conditions on the northwest of 22, 130, 47, that is the land you owned in 1915?

A. Yes sir.

Q. Look at that and state to the court whether that represents the appearance of this land in 1917?

A. Yes, sir, it does.

Q. What are those things showing?

A. Those are what they call cat-tails, grass they call cat-tail grass.

Q. To what extent was that growth over the lands in 1917?

A. It extended pretty well over the whole quarter.

Mr. Pinkney: We offer that in evidence as Complainant's Exhibit 26.

Q. As I understand you, this land in 22, your land that you owned in 1915, was in such condition by reason of these flood waters in 1917 that you could not get onto it to plow it until early in the summer?

A. No, you couldn't get onto it until the latter part of June or July.

Q. That was too late for the crop production in the year 1917?

A. Yes, sir.

2027 Q. You had no experience with trying to plow this land in 1917 with this cat-tail growth on it?

A. No, sir.

Q. Do you know anything about it from your observation of land which was plowed up?

A. No, I do not.

Mr. Bronson:

Q. You have answered several questions that counsel for Minnesota has asked you concerning this land transaction covering this land. It appears that you bought the land for $5,000.00 and you farmed it for about two years and then you sold it to the land company for $50. an acre?

A. Yes, sir.

Q. Then the land company sold this to some Illinois party for $65 an acre?

A. Yes, sir.

Q. And you took the second mortgage on the land?

A. Yes, sir.

Q. And there was a first mortgage on it for $3,000?

A. Yes, sir.

Q. And the interest on the second mortgage was not paid?

A. No, sir.

Q. And you foreclosed that mortgage?

A. Yes, sir.

Q. And then, during the year of redemption, you took off a crop from that land?

A. Yes, sir.

Q. That was in 1915?

A. Yes, sir.

Q. And then the land company came and exercised their right of redemption under the law and redeemed?

2028 A. No, they did not redeem, although they had an understanding that I would turn it back to them at $50.00 an acre. They said that it would be unfair for them to buy it at $50 an acre and let it go back to me.

Q. What I am trying to get from you, when this party defaulted in the interest, from Illinois, when the foreclosure was made and the deal consum-ated so far as the foreclosure was concerned, so that the land company should have this land.

A. Yes, sir.

Q. Whether they did it under a redemption under the law or did it by agreement to you direct?

A. Yes, sir.

Q. In other words, when the land company took it back you allowed them to do it under the same terms at which you sold it?

A. Yes, sir, they paid all the expenses of the foreclosure.

Q. And that agreement was made before the 1915 crop wasn't it?

A. Yes, sir.

Q. You foreclosed before the 1915 crop?

A. The proceeding was taken up, taking the year of redemption. During that year agreed with me that they take it off my hands and pay all costs connected with this foreclosure.

Q. And you made that agreement before you went abroad; didn't you go abroad?

A. No, I went out to the Exposition.

Q. So that there wasn't any original sale made second at all?

A. No, it wasn't really a sale.

2029 Q. Simply a consum-ation of this first deal you made with them, selling at $50 an acre?

A. Yes, sir.

Q. In your testimony before at St. Paul you said generally that these flooded lands as you designated on this map, Complainant's Exhibit 1, that were flooded in [illegible]ears 1915 and 1916 had no market value for market purposes?

A. No, sir.

Q. Is that correct?

A. Yes, sir.

Q. You know what we mean, do you not, when we use the term market value?

A. Yes, sir.

Q. So perhaps repeating I will ask you to state again what is the market value now of this northwest quarter of section 22 with the condition considered similar to 1915 and 1916 with a recurrence of such conditions?

A. I believe I am unable to state. I don't hardly think that you could find a half dozen men who could agree on the same price. My judgment would be under the present condition I would not place a very high value on it, $15 an acre on unimproved land. What I mean by that, land without buildings.

Q. In your testimony in St. Paul the question was propounded to you with a climatic condition existing somewhat similar to the years 1915 and 1916 if these lands should be overflooded again as they were in 1915 and 1916, would these lands the land you formerly owned have any value for farming purposes and you answered the question, no, sir. Does that mean the market value?

A. If the same conditions would come along they would have no market value but they have a speculative value.

2030 Q. I didn't ask you for a speculative value I asked you for a market value?

A. Market value, I don't know what you mean by market value. I probably would pay $15 an acre for some of that land and run the risk of getting a crop next year or two or three, as the case may be.

Recross-examination.

By Mr. Palmer:

Q. Bearing upon the market value of flooded land, you state that since these floods occurred one quarter of land, part of which was flooded, has been sold. What land was that?

A. Oh, land adjoining the flooded area this quarter east of town that I spoke of has been sold.

Q. You mean the——

A. Southwest of 21.

Q. Southwest of 21?

A. Yes, sir.

Q. Adjoining this flooded area?

A. Yes, sir, I understand it was partly flooded in 1915.

Q. You understand that part of it was flooded?

A. Yes, sir.

Q. And since the floods of 1915 and 1916 your understanding is that it has been sold at $107 an acre?

A. I think that was before the flood, if I am not mistaken. I think that was 1915 that the land was sold.

Q. What part of 1915?

A. In the early spring, or the fall of 1914; one of the other, I wouldn't say.

2031 Q. What else, you spoke of two quarters having been sold?

A. There is another one lays south of town about two miles, northeast of 32, has been sold at $100 an acre.

Q. Since the flood?

A. That was sold in the fall of 1914, I think, at about $100 an acre.

Q. You spoke of some having been sold since these floods?

A. No, I don't think there was anything sold only the land company stepping in and taking the quarter off my hands, if you call that a sale. I don't call that a sale because that was an agreement beforehand, that they would relieve me off of the land owing to the fact that they had bought it and they didn't want me to take it back again; that is, they thought it would be unfair to throw it back onto my hands.

Q. They thought it was unfair to give you the land and $2,000 back?

A. They really bought it themselves at $50 an acre but in the transaction the papers ran from the party they sold it to to me.

Q. And you thought it would be a little unfair for you to have $2,000 and the land too?

A. They was the ones that thought it was unfair to have the land thrown back onto me after they bought it.

Q. They thought it wasn't treating you right to throw $2,000 and the land onto you?

A. I don't know anything about the $2,000. The $2,000 come out of the $50 an acre, they didn't make me a present of that.

Q. Then, do you know of anything other than this disposition

of your land to this land company by which you can fix the fair market value of these flooded lands?

2032 A. No.

Q. Since the advent of the flood?

A. No, sir.

Q. You stated upon your direct examination that a number of the land owners injured by these floods had contributed to a fund to employ private counsel to represent them in this litigation how large a fund has been contributed by these private parties?

A. I am unable to say just how much money there was raised.

Q. Have you some information respecting that?

A. Approximately I think something like $4,000.

Q. And, since you appear so well informed upon the subject, how much has the State of North Dakota according to your information contributed to the carrying on of this litigation?

Mr. Pinkney: We object to that as not the best evidence, incompetent and immaterial.

A. I only put it in a general way, the general fund.

Mr. Palmer:

Q. State such information as you have.

Mr. Bronson: Objected to as hearsay.

A. I know that they have created a drainage commission and they have also raised some money by the legislature at the time but I forget what they are.

Q. Your understanding is that the drainage commission of the State of North Dakota is carrying on or participating in the carrying on of this litigation?

Mr. Bronson: That is objected to on the ground that it is asking for mere hearsay evidence and the witness is instructed not to answer the question upon the advice of counsel as being a matter purely irrelevant and no connection with the case whatsoever and bringing up testimony that has *bo* merit whatsoever in deciding the issues in-

2033 volved in this case and if answered would compel the State of North Dakota to prove all the functions of the state drainage commission, having no connection with this case, it being merely an advisory board by resolutions passed by the State of North Dakota appointing them for the purpose of conferring with the county drainage units of the State of North Dakota and investigating flood conditions.

Mr. Palmer: I would like the question answered if the witness will answer it.

Mr. Bronson:

Q. You don't know anything about it do you?

A. I know why the board was created and all that, that is, I am satisfied I know. It would never have been created if it had not been for the conditions down here that we have.

Mr. Palmer:

Q. Have you any information as to how much has been appropriated by the state of North Dakota for the purpose of carrying on this litigation?

Mr. Bronson: That is objected to as not the best evidence, wholly immaterial and simply loading the record with irrelevant evidence, calling upon the complainant here, if it was competent, to introduce proof concerning it, likewise to load the record as to what Minnesota has done, how many experts it has employed, wholly outside of the issues in this case.

A. No.

2034 CHARLES R. PINKNEY, recalled on behalf of complainant, testified as follows.

Examined by Mr. Pinkney:

Q. Are you the same Charles R. Pinkney that testified at a former hearing of this cause?

A. I am.

Q. Are you still the owner of the land that you testified you owned at the time you gave your former testimony?

A. I am.

Q. Of the land in Richmond County, North Dakota?

A. I am.

Q. Can you describe those lands again, Mr. Pinkney?

A. Each tract separately, do you want?

Q. Yes, give a description of each tract if you can.

A. I own the northeast of 28 and the southwest of the northwest of 27 and lots 1 and 2. I also own the southeast of 21 and the west half of the southwest of 22 and 10f 1; and I own the north half of the northwest of 28, all in township 130, range 47.

Q. Give the total acreage?

A. 637 acres.

Q. Were any portion of these lands overflowed by flood waters in the year 1915?

A. They were.

Q. Give the total number of acres as near as you can of the lands that were flooded in 1915?

A. 400 acres.

Q. Are you able to state whether at the time these flood waters came up these lands they were cropped in any way?

A. They were all in crop.

2035 Q. The whole 400 acres?

A. Yes, sir.

Q. Will you tell the court what your crop consisted of on these 400 acres?

A. I will refresh my memory by looking at the memorandums here.

Q. Start with your wheat first.

A. About 200 acres of wheat or 201 acres of wheat, 78 acres of barley, 50 acres of oats, 11 acres of alfalfa, 52 acres of tame and wild hay together, 106 acres of pasture, 59 acres of corn. That includes what I call the lower place where the damage was done.

Q. We are talking about the lands that were flooded and nothing else.

A. That was the only lands that were flooded.

Q. That would make 557 acres you have given, is that right?

A. That is what the farm contains, that is what it should make.

Q. 557 acres, is that what the farm contains?

A. Yes, sir.

Q. Then you were mistaken when you said 637?

A. 637 includes this eighty up here that I live on right at the corner of the townsite.

Q. On these flooded land-, as I understand, you had 201 acres of wheat?

A. Yes, sir.

Q. 50 acres of oats?

A. Yes, sir.

Q. 78 acres of barley?

A. Yes, sir.

2036 Q. 11 acres of alfalfa?

A. Yes, sir.

Q. No flax?

A. No flax.

Q. 52 acres of hay land?

A. Yes, sir.

Q. 106 acres of pasture?

A. Yes, sir.

Q. And 59 acres of corn?

A. Yes, sir.

Q. How many acres of this land that you have given were flooded and your crops destroyed by the flood waters in 1915?

A. 400 acres approximately.

Q. What crops were on those lands, how many acres of wheat did you have destroyed?

A. We had 133 acres destroyed.

Q. How much barley did you have destroyed?

A. 78 acres, never got a spear of it.

Q. How many acres of oats did you have destroyed?

A. 15 acres.

Q. How many acres of alfalfa did you have destroyed?

A. I had 11 acres destroyed in the old meadow and I also had 20 acres which I didn't mention because it would have made my acreage too much. I had 20 acres of new seeding which was also destroyed.

Q. You had 31 acres?

A. 31 acres destroyed, but if I had told you 31 acres it would have added up 577 instead of 557.

Q. What I want to get at is how many acres you had destroyed no matter how much it is?

2037 A. I have made this explanation because——

Q. How many acres of alfalfa did you have destroyed?

A. 31 acres.

Q. How many acres of hay did you have destroyed?

A. 52 acres.

Q. How many acres of pasture did you have destroyed?

A. 106 acres.

Q. How many acres of corn did you have destroyed?

A. 59 acres.

Q. What was the condition of your wheat crop at the time the flood waters came on them in the year 1915? What was its condition?

A. The condition was most excellent.

Q. What was its promise of a good, abundant crop at that time?

A. The promise was good.

Q. How was that with respect to your oats?

A. The oats were excellent.

Q. And the barley?

A. The barley was the same.

Q. Alfalfa land, in what condition was that?

A. Alfalfa was in a very flourishing condition.

Q. And your hay land?

A. Hay lands were also in the same condition.

Q. And your corn?

A. The corn was not in as promising condition. Well, yes, it was in a promising condition when the water first came on.

Q. I am asking you what the condition of the crop was at the time the waters came on?

A. A very promising condition.

2038 Q. All of the crops?

A. Yes, sir.

Q. What was the value of your wheat crop that was destroyed in the year 1915? What was the value of it on the land at the time of its destruction by these flood waters?

Mr. Palmer: Objected to as not the proper measure of damages.

A. Do you want me to answer it in dollars and cents?

Mr. Pinkney: I want you to tell how much the value of the crop was at the time it was destroyed by those flood waters, what was its value on the land at that time?

A. I estimated the value of the wheat destroyed at $4,788.

Q. How many acres?

A. 133 acres.

Q And how did you get at its approximate yield?

A. I got at its approximate yield by the yield of that portion of the wheat which was not destroyed which we did thresh.

Q. What did that average?

A. 24 bushels.
Q. What was the quality of the grain?
A. All #1 wheat, northern.
Q. As I understand it, you harvested how many acres?
A. 68 acres.
Q. And that yielded 24 bushels to the acre?
A. 1615 bushels.
Q. How much to the acre?
A. 24 bushels to the acre lacking one-tenth of a bushel.
Q. As far as you were able to judge, was this acreage of wheat that was destroyed equally as good as that on the land which you harvested?
2039 A. Fully as good.
Q. How do — fix a market value of this crop, on the land there, the wheat crop?
A. I fix the value of my wheat crop by taking the price received of that I did thresh and sell, so far as I have sold it and I still have a little of it and I put that in, not at the present price but I put it in at the average price I sold the rest of it.
Q. What was the average price you received of that you sold from the 68 acres you harvested?
A. $1.53.
Q What, for the whole business?
A. Per bushel.
Q. What was the market value of this wheat crop on the 133 acres that was destroyed at the time the flood waters came up on it?
A. Figuring at the same basis as that which we saved, it would have amounted to $4,788.
Q. Did you, in arriving at your losses there, did you deduct from the crops that were destroyed by these flood waters the expenses of harvesting, threshing and marketing the grain?
A. I did.
Q. What did you deduct as the probably expense of these items, how much per bushel?
A. 10c a bushel.
Q. Is that a fair deduction for the expense of harvesting, threshing and marketing such a crop?
A. It has been my experience that that is about the cost.
Q. Have you deducted from that estimated damage on this wheat crop loss all items of expenses that would have been necessary
2040 for you to have incurred to have put this crop into market?
A. I have.
Q. With reference to your oats, what was the value of your oat crop at the time it stood on the land when the floods came?

Mr. Palmer: Objected to as not the proper measure of damages.

A. I have estimated the value of the oat crop to be 60 bushels an acre, total [illegible] bushels at 50¢ per bushel making $450, less the cost of harvesting 8¢, which would be $72 leaving a net value of $378 loss.

Q. In estimating your losses on your oat crops, on what did you base your yield?

A. On what the other yielded we did thresh.

Q. Did you harvest some part of your oat crop?

A. 35 acres.

Q. What did that average per acre?

A. 60 bushels.

Q. Was that a part of the same field where the oats were grown on which the loss occurred or was it on land about of a similar character?

A. On lands of a similar character.

Q. Were the oats that were destroyed of about the same promise of crop as those that were harvested?

A. Fully as good, is not better.

Q. In arriving at your loss on your oat crop have you deducted every item of expense that you would have been put to if the oats had been harvested and marketed?

A. I think so.

Q. What did I understand you to say you deducted as that
2041 expense?

A. $72 of the fifteen acres.

Q. Let me ask you if you got any portion of the straw from these oats that were destroyed by the flood waters?

A. No, sir.

Q. Was that straw of any value to you for any purpose?

A. I should say so.

Q. For what purpose was it valued?

A. Feeding stock.

Q. Did you have stock to feed it to at that time?

A. I had the stock when the flood first occurred.

Q. I am asking you whether you had stock to feed it?

A. Yes, sir.

Q. How many head of stock did you have, counting all your stock, your horses and cattle, did you feed it to both?

A. Yes, sir.

Q. How many head did you have?

A. I don't know as I can answer it just now.

Q. If you can't get within five head of it, get it as near as you can?

A. My recollection is that I had about 40 head of cattle and nine head of horses.

Q. Approximately 50 head of stock?

A. Yes, sir.

Q. What was the value of the oat straw that you lost on this flooded oat land, what was its value to you standing in the field for the purpose and use you have indicated, how much per acre?

Mr. Palmer: Objected to as not a proper measure of damages.

A. $2 an acre.

Mr. Pinkney: That would be how much for the whole?

A. $30.

2042 Q. Let's get down to the barley. Did you harvest any part of that 78 acres of barley you had on these flooded lands?

A. Not a spear of it.

Q. Why not?

A. Three feet of water on it all summer.

Q. Was it all destroyed by the flood waters?

A. Yes, sir.

Q. Do you know what the yields of barley were on the other lands located in your vicinity about of the same character of crop that this was at the time of destruction?

A. I think the reports that came to me indicated an average yield of about 40 bushels.

Q. Was that from lands in your neighborhood?

A. Yes, sir.

Q. Of a similar quality and character of lands as yours?

A. Yes, sir.

Q. What loss did you sustain on your barley crop on those 78 acres; what was its value standing in the field at the time of its destruction, its net value?

Mr. Palmer: Same objection.

A. I figured its net value at $2,287.10.

Mr. Pinkney:

Q. On a basis of a yield of 40 bushels per acre?

A. Yes, sir.

Q. In arriving at its net value, as you have testified, did you take into consideration all items of expense that you would have been put to to harvest, thresh and market the grain?

A. I did.

2043 Q. What deductions did you make?

A. 9 cents a bushel.

Q. You have raised barley before, have you?

A. Yes, sir.

Q. From your experience in cutting, threshing and marketing barley would you say that 9 cents a bushel is a fair deduction for such expense?

A. I do.

Q. What do you say your net loss is on barley after making all deductions?

A. $2,287.10.

Q. I understand you had no flax?

A. No flax.

Q. Your alfalfa meadow land, what was the result or effect of these flood waters on that alfalfa meadow land, 31 acres?

A. Totally destroyed.

Q. Have they renewed themselves since the water receded?

A. They have not.

Q. What was the condition of the land where those alfalfa meadows were in the spring of 1917 or summer of 1917?

A. A vast wilderness, all kinds of weeds.
Q. Alfalfa all destroyed?
A. Alfalfa all destroyed.
Q. What was the value of those alfalfa meadow lands per acre for the uses and purposes for which you used them in the year 1915 before they were destroyed?

Mr. Palmer: Same objection.
The Commissioner: You mean the crop.

2044 Mr. Pinkney:

Q. The alfalfa crop?

Mr. Palmer: Same objection.

A. I have estimated the value of the alfalfa crop at $150.

Mr. Pinkney:

Q. That would be on the 31 acres?
A. Yes, sir.
Q. At the time they were destroyed?
A. Yes, sir.
Q. That is on the basis of $5 per acre?
A. No, sir, that is not the way I estimated it. I estimated $10 an acre on the old alfalfa and $2 an acre on the new alfalfa. I put no value on that except the cost of the seed I put on and the little item for labor, that is in the year 1915.
Q. Didn't it cost you over $2 an acre to put in a crop on 20 acres?
A. No, I raised my own seed.
Q. Was it worth anything at all to raise it?
A. I put the price of the seed in at the same basis I received for the balance I didn't sow.
Q. But it cost you $2 an acre to put in the 20 acres?
A. Yes, sir.
Q. And you estimated the 20 at $2 and the 11 acres at how much?
A. $10 an acre, making $110 for the ten acres, and $40 for the 20.
Q. That would be $150?
A. Yes, sir.
Q. Which was the average value of those crops for the year of 1915?

A. Yes, sir.
2045 Q. As they stood on the ground before the flood waters came over?
A. Yes, sir.
Q. Now your hay, how much hay land did you have destroyed by the flood waters?
A. 52 acres.
Q. What was the value of your hay land per acre immediately before the flood waters came onto it?

The commissioner:

A. You mean the crop.

Mr. Pinkney: I mean the value of the crop, yes, sir.

A. I have estimated at $3 per acre.
Q. On what basis do you arrive at that valuation?
A. Well I think that is about the valuation that I could have sold it at on the ground.
Q. On the ground?
A. It was worth more than that to me in a speculative sense because I had the cattle to use it for and if I had harvested it it would have been worth——
Q. I am asking you what the damage was to you or loss of this hay on this land.

Mr. Palmer: Objected to for the same reason.

A. That is hard to estimate.

Mr. Pinkney:

Q. Are you satisfied to leave it at the figures you have given.
A. Yes, sir, I have put in the value at $3 an acre which would have been about the value I could have sold it for on the ground, which would be $156.
Q. Now the pasture land, how much of that 106 acres of pasture land did you have destroyed by these flood waters?
A. All of it.
2046 About 106 acres?
A. Yes, sir.
Q. What was the value of those pasture lands, the crop on those pasture lands or grass on those pasture lands at the time the flood waters came up on them.

Mr. Palmer: Objected to as not the proper measure of damages.

A. I put the value in at $2.50 an acre.

Mr. Pinkney:

Q. Why did you put the figures at $2.50 per acre?
A. Because I had realized something of the value of the pasture up to the time it was destroyed.
Q. How did you come to take $2.50 an acre as the value of the crop on the pasture land at the time it was flooded?
A. Well I estimated that the pasture land should have rightfully been worth as much as the hay land but we realized something by pasturing the land for six weeks or two months before the flood came on.
Q. You think that the value of the pasture land for the balance of the season after the floods came would be $2.50 an acre?
A. Yes, sir.

Q. That was the value of the grass lands to you at the time the flood waters came on?

A. Yes, sir.

Q. How much would that total?

A. $190 I have got down on the slip, that doesn't figure out at 106 acres at $2.50 an acre, I don't know how I arrived at that.

Q. That would be $2.65 wouldn't it?

A. Yes, sir.

2047 Q. Is that the value of the crop on this pasture land at the time it was destroyed?

A. I put them in at that, I am sure they were worth a great deal more than that to me.

Q. Your corn land, you had 59 acres of corn land?

A. Yes, sir.

Q. How much of that was destroyed by the flood waters in 1915?

A. All of it.

Q. What was the value of the crop on that land at the time it was destroyed?

A. I put the value in at $8 an acre.

Q. The value on the field?

Mr. Palmer: Objected to as not the proper measure of damages.

A. Yes, sir.

Mr. Pinkney: What would be the total loss then?

A. $472, I think.

Q. In fixing that valuation have you deducted from your figures given all items of expense that you would have been put to to harvest and market the corn crop?

A. Yes, sir.

Q. What allowance did you make for such items of expenses?

A. Well, I didn't make a very great allowance for the expense of harvesting the corn crop because it is uaually a matter that I attend to myself.

Q. Isn't your labor worth anything?

A. Yes, sir, I certainly do put a value on my labor.

Q. How much would it cost to harvest the crop of corn on these lands where the crop was destroyed, your 59 acres?

2048 A. Somewhere in the neighborhood of $2 an acre.

Q. You would say it was worth $2 an acre more than $8 an acre then?

A. Yes, sir.

Q. In other words, as I understand you, the valuation of your crop in the field at the time of its destruction was $8 an acre after ducucting all items of expense for harvesting the crop is that right?

A. Yes, sir; $8 an acre.

Q. On what figures did you arrive at the valuation of these several crops that you have given? I haven't asked you how you arrived at the oats, or barley or corn, what valuations did you take in arriving at them?

A. I took the valuations for the portion I had saved. Of course, I said I didn't save any of the barley but I sold barley I carried over

from the previous year for 80¢ and I used that figure to establish the valuation of my barley.

Q. How about the corn?

A. The corn, I put the value of that somewhere near what I realized from it when I saved it and fed it to my stock.

Q. Was that the market value of the corn.

A. To me, yes, sir.

Q. No, was that the market value of the corn, did you fix your value on the market value of the corn or did you fix it on its value to you for the purpose for which you produced it?

A. Yes, sir, I fixed it on the market value of the corn with the additional value to me being on the ground and being valuable to me as fodder.

Q. Was the fodder on this corn land destroyed or was it of any value to you?

A. No, sir, I guess not.

2049 Q. If it had not been destroyed, would it have been of any value to you?

A. It certainly would.

Q. How much?

A. At least $2 an acre.

Q. How many acres?

A. 59 acres.

Q. That would be $118?

A. Yes, sir.

Q. In what did its value consist? What uses would you make of it to make it of value to you?

A. Feeding it to stock, cattle and horses.

The Commissioner:

Q. Is that figure in your first valuation $8 an acre?

A. No, sir.

Mr. Pinkney:

Q. Then your $8 an acre is exclusive of the $2 an acre as the value of the fodder, is it?

A. Yes, sir.

Q. Your oats crop that you lost that year, how do you fix the value of that, did you take the market value of the oats?

A. I sold considerable oats that year carried over for 65¢ and I put the price on this in at 60¢ I thought there wouldn't be any objection to that.

Q. It is a question of market value?

A. I got I think a little more than market value because my oats were always clean and free from wild oats.

Q. You got that from the market?

A. I got it from private parties, came there and bought my seed; I never sold any oats in the market.

Q. Then that was the market?

A. That was my market, yes, sir.

2050 Q. You sold it in the market then, did you not?
A. Yes, sir.
Q. And get 65¢?
A. 65¢ a bushel.
Q. Let me ask you, did you sustain any other losses than those toy your crops that you have mentioned by reason of these flood conditions in 1915?
A. Yes, sir.
Q. What other losses did you sustain?
A. The losses of fences.
Q. What kind of fences was that in 1915?
A. Barbed wire fences.
Q. Was that in 1915?
A. Of course, the destruction of the fences was not all accomplished in one day or one year.
Q. From the flood of 1915?
A. Yes, sir.
Q. Tell us what the character of the fences was what your losses were or what the flood waters did to them?
A. I had 120 rods of woven wire fences.
Q. What kind of posts?
A. Cedar and Osage hedge. I put in no damage to posts on that fence, though.
Q. How many rods of fence did you have destroyed all told?
A. 412 rods of barbed wire fence and 120 rods of woven wire fence.
Q. How many rods all told?
A. 532 rods.
Q. Tell the Court in what manner, how it was destroyed, what the flood waters of 1915 did to it.
2051 A. The waters standing so deep over the ground, of course, the rust destroyed the wire, and the waters that remained on the winter of 1915, froze up and in the form of ice the wind blew it and it tore the fences and uprooted the posts, broke them off, lifted out the corner posts and left the fence in a tangled mass.
Q. What — it do with it?
A. I don't know what it did with all of it, I haven't been able to find it.
Q. Took some of it away?
A. Some of it is gone entirely and no man can locate it.
Q. The greater portion of it or the smaller portion?
A. A small portion is gone entirely and the rest of it *it* lying in various parts of the adjacent territory in a tangled, rusted up mass.
Q. That is the wires?
A. The wires and some of the posts, and some of them are broken and some of them are gone.
Q. Destroyed entirely as a fence?
A. Yes, sir.
Q. Have you estimated what it will cost you to replace that fence that was destroyed, taking the woven wire fence first; how much per rod to replace it just as it was before the flood waters damaged it?

Mr. Palmer: That is *on*jected to as not a proper measure of damages.

A. I have estimated the value of the woven wire fence at $48.

Mr. Pinkney: How many rods of woven wire fence?

A. 120 rods at 40¢ a rod.

Q. Can you replace a woven wire fence at 40¢ a rod?

A. I am not sure as to that.

2052 Q. That is what I asked you?

A. As much as that any way and *and* probably a little more. I wanted to be conservative, I can state more definitely on the barbed wire.

Q. How much did you say?

A. $48.

Q. Does thta include the labor of replacing it or just the cost of material?

A. I think that only includes the material.

Q. I want to know what the cost of the fence is, what it would cost you to put back the fence today, to replace that same fence today?

A. All that was destroyed?

Q. All that was destroyed?

A. I have estimated the cost of replacing *o*t all at $253.30.

The Commissioner: You want the objection made to stand through all this testimony?

Mr. Palmer: Yes, your honor.

Mr. Pinkney:

Q. Is that $253.30 the value of the fence to you at the time the flood waters came on your land?

A. That is the value it would cost to *to* replace it now.

Q. That is what it would be worth if it had not been destroyed?

A. Yes, sir.

Q. That is the market value of the fence?

A. Yes, sir.

Q. Labor and materials and everything else?

A. Yes, sir.

Q. Have you given all the items making up your losses on your land due to these flood waters in 1915?

2053 A. I believe I have.

Q. Have you added up the several items you have given so as to give the Court the total sum?

A. I have added up the items I have here but you have added some additional ones.

Q. Have you given all the items on which you sustained a loss or damage by reason of those flood waters in the year of 1915?

A. I have another item here.

Q. Answer that yes or no?

A. No.

Q. What other item have you on which you sustained a loss that you have not given?

A. Plowing and the labor of seeding the land.
Q. For what?
A. For the crops that were destroyed.
Q. That is included in the value of the land at the time of their destruction?
A. Al- right, I am satisfied.

The Commissioner:

Q. There is one item of uncertainty as to the value of the wheat. I understand that you measure the value of your wheat crop based upon the price of wheat which was afterwards sold at $1.53 a bushel?
A. $1.53 I estimated.
Q. At what time did you figure that price, was that in the year 1915 or subsequent years?
A. I can give the dates.
Q. Was it in the year 1915 or subsequent years?
A. I think I sold none of that wheat in the year 1915. I think I began selling the first of it in January.
2054 Q. Then that $1.53 was not the market value in 1915?
A. It was what I received. He asked me how I arrived at the conclusion, I told him it was the average price I received for what I sold.

Mr. Pinkney:

Q. Can you give the mean market value of the crop between August 1, and January 1 following?
A. No, I couldn't, not without consulting the elevators.
Q. What price did you get for your wheat crop that you raised on the lands not affected by the flood waters in the year 1915?
A. I have the bushels and the price here for every load that I sold.
Q. State it.
A. I haven't the dates.
Q. Give approximately the dates and the prices?
A. The first sale was 47 bushels 20 pounds at $1.15.
Q. When was that?
A. Middle of January.
Q. What year?
A. 1916; next sale was 155 bushels and 5 pounds at $1.17 a bushel.
Q. When was that?
A. That was I think in February, 1916; and the next was 105 bushels at $1.44, I think it was in May, 1916. The next sale was 133 bushels at $1.56 and I think that was in July, and the next sale was 27 bushels and 10 pounds in April, 1917, at $2.97 a bushel. The next sale was 48 bushels and 10 pounds, about two days later, $2.24 a bushel. Then I estimated the value of what I have on hand now after I sold off a little at the average price I had received for the rest of it, which was $1.53.

2055 Q. Did you deduct what you had on hand from the amount you have given in?

A. No.

Q. Didn't you deduct the value of the crop you still have got from your losses?

A. Sure, I deducted all of these items I have read from my losses. I don't figure what I sell as a loss or anything I have got on hand, but I say I estimated the value of it, striking an average, the average value of all the wheat I sold or had on hand and that I didn't put it in at $2 a bushel, I put it in at $1.53.

Q. What is the usual time that you market your wheat and oat crop if you have any usual season?

A. I usually market about enough to pay expenses right at threshing time and market the rest when I need the money.

Q. What do you mean by marketing enough to pay expenses, what expenses do you refer to?

A. Threshing and labor and other things.

Q. Labor attending threshing.

A. Yes, sir.

Q. What do you say as to being the usual time of marketing crops in this locality such as cereal crops, between what dates?

A. I should say a large percentage of the farmers around here are in the habit of doing what I do. They market enough to pay cash expenses at the time of threshing. The rest is put into the bin and marketed later.

Q. When would that be? When do they market that?

A. Usually up to the time of threshing next year.

Q. Next year?

A. Yes, sir. Of one year's crop enough would be sold to meet actual expenses at the time and the balance of it would be

2056 put in the bin and hauled off from time — and probably would not all be delivered to market until just before threshing time next year. That is my recollection, my judgment of what my neighbors around me do.

Q. Is that the way you have been in the habit of doing?

A. Yes, sir.

Q. And your figure- that you have given as to market value are based upon the mean valuation of that period of time, only that period of time?

A. No, it would have been higher if I had taken the mean values over that period of time.

Q. That is to say, if you had taken the mean market values of your cereal crops that were destroyed by the flood waters of 1915 for the year next following the threshing season they would have been higher than the prices that you have taken?

A. I think they would.

Q. You may state to the Court whether or not these lands were flooded again during the crop growing season of 1916?

A. They were.

Q. And to what extent, how many acres did you have flooded in the year 1916?

A. I should say 450 acres.
Q. About 50 acres more than you had in the year previous?
A. Yes, sir.
Q. What crops, if any, did you produce on these lands, these 450 acres of land, in the year 1916?
A. None whatever.
Q. Why?
A. Impossible to get onto them.
Q. Why?
A. On account of the water.
2057 Q. Flood waters?
A. Flood waters.
Q. Do you know of any lands in the vicinity of your lands that is, anywhere within a mile or so that produced wheat crops in the year 1916?
A. I do.
Q. Do you know what the yield per acre was of the wheat crop in the year 1916 on such lands as were not flooded by those flood waters?
A. I should say from 3½ to 5 bushels an acre.
Q. What was the quality?
A. Wheat was very poor.
Q. The quality of the wheat that they raised, what was its quality, I mean?
A. Very poor.
Q. Very poor quality of wheat?
A. Yes, sir.
Q. What was the market value of the wheat produced on these lands not flooded in 1916?
A. You mean per acre or per bushel?
Q. Market value per bushel of this wheat crop produced on those lands not flooded in 1916?
A. I think the most of it was sold at about $1.10 to $1.25 per bushel.
Q. Here in the market?
A. Yes, sir.
Q. Your market?
A. Yes, sir.
Q. How about the oat crop on lands not affected by those flood waters in 1916, what do you know as to the oat yield?
A. I think they were light according to my recollection
2058 and knowledge.
Q. I am asking you for your knowledge of them from what you know of your own knowledge with respect to these lands I have asked you about.
A. My own knowledge is very limited, I only know as to my own crop and a few of my immediate neighbors.
Q. What do you know about your few and immediate neighbors as to what they produced?
A. They produced crops of from 6 to 12 bushels to the acre of oats.

Q. They ran from 6 to 12?

A. Yes, sir.

Q. What was the market value of the oats per bushel that they produced?

A. I think there were so poor they would be hard to market at any value.

Q. What were they paying for oats such as they did raise?

A. I don't know.

Q. How about the barley crop, what was the production of barley on lands in your immediate neighborhood that you know about for the year of 1916?

A. I don't know as I know.

Q. Flax, how about flax, you know anything about flax?

A. I know very little; my judgment is that the flax was better than either the oats or barley or wheat.

Q. Did you raise any of these crops on any of your lands that were not flooded?

A. Yes, sir, a little oats and a little barley.

Q. What yield of oats did you get on your land that wasn't flooded?

A. I think somewhere about 6 bushels to the acre of oats.

2059 Q. What did you get of barley?

A. About 12.

Q. 12 bushels to the acre?

A. Yes, sir.

Q. What was the market value of the barley?

A. I had none to market, so I couldn't say.

Q. Do you know what its market value was?

A. I don't know, I know what I could have marketed mine for.

Q. What could you have marketed yours for?

A. For $1.50 a bushel for seed this spring.

Q. You could have got $1.50 a bushel for 12 bushels to the acre is that right?

A. Yes, sir.

Q. How many acres of barley did you have on lands not affected by the flood waters in 1916?

A. About 10 acres that were not destroyed.

Q. Did you have any flax?

A. No, sir.

Q. Any alfalfa?

A. Yes, sir.

Q. How much alfalfa did you have in 1916 that was not destroyed by the flood waters of that year?

A. I had about 4 acres of old alfalfa and 14 acres of new seeding, first year.

Q. You had nothing on any of these flooded lands?

A. They were all destroyed.

Q. What was the alfalfa worth per acre, the old alfalfa and the new?

A. I estimated the value of the old alfalfa at $20 per acre in 1916 and of the new $10 an acre.

2060 Q. How much would that be, the value of the alfalfa?

A. It would be $220 on the 11 acres of old and $200 on the 20 acres of new, a total of $420.

Q. How about the hay land, did you have any hay land that was not flooded?

A. Yes, sir.

Q. What was the value of that in the year 1916?

Mr. Palmer: This is all objected to as not the proper measure of damages.

The Commissioner: It is all taken subject to objection on the grounds stated.

A. I estimated the value of the other hay at $3.00 per acre.

Mr. Pinkney: The hay land that was not affected by the flood waters of 1916?

A. Well, I estimated the value of the hay land that was destroyed at $3.00 an acre.

Q. On what basis did you arrive at that?

A. Because you could sell it for that or more.

Q. If you could sell it for more, why didn't you fix it for that? What was its market value standing on the ground?

A. I based my claim on $3.00 an acre.

Q. I am not asking you that, I am asking you what its market value was?

A. I don't know.

Q. How did you arrive at your figure of $3.00?

A. I am sure I could sell it for that.

Q. You sold some?

A. No, I did not. I put it up and fed it, it was worth a great deal more than that to me.

2061 Q. When it was harvested?

A. Yes, sir.

Mr. Bronson:

Q. How much on a average did it produce per acre in 1916?

A. Tame hay produced on an average of two tons or 2½ tons to the acre.

Q. How much was it worth per ton in the stack?

A. That would figure up somewhere near what I stated. I don't know just exactly how to get at the cost of harvesting or putting up hay many of these years and it is hard to fix the cost if you hire someone else to do it.

Q. Can you fix the value of this hay land on the basis of 2½ tons to the acre, do you say?

A. That that I got went fully that.

Q. What was it worth in the field before it was cut?

A. I have stated $3.00 an acre.

Q. What was it worth harvested per ton?

A. Well, early in the fall I think you could have bought hay here for $6.00 a ton.

Q. If it went 2½ tons to the acre that would be $15 an acre?
A. Yes, sir.
Q. Then it would have been worth $15 an acre harvested?
A. Yes, sir.
Q. Do you say it cost $12 an acre to harvest hay?
A. No, sir.
Q. How do you fix the value of $3 per acre for hay in the field?
A. I wanted to fix a conservative figure.
2062 Q. Assuming it was worth $15 an acre harvested and in the barn, how much was it worth on the field?
A. Well, if it was worth $15 an acre in the barn, it certainly wouldn't cost over half of it because you can always get hay put up for that.
Q. It would be worth $7.50 in the field?
A. Yes, sir.
Q. Do you think that would be a fair market value for the hay in the field if it had not been destroyed by the flood waters?
A. I would not have taken that for mine.
Q. I didn't ask you that question. Read the question.

(Question is read by reporter.)

A. Yes, sir.
Q. $7.50 an acre?
A. Yes, sir.
Q. Have you estimated what your loss and damage was on this flooded land and by reason of these floods for the year of 1916?
A. I have.
Q. You may tell the court what the amount of such damages are as you have estimated them, and as they were?
A. Itemized or the aggregate?
Q. State it in your own way?
A. I have estimated my loss on those lands for the year 1916 as follows: 100 acres of corn, $18.00 an acre, $1,800; 100 acres of pasture, at $3.00 an acre, $300; 52 acres of meadow, at $3.00 an acre, $156; 11 acres of old alfalfa meadow at $20 an acre, $220; 20 acres of new alfalfa meadow at $10 an acre, $200; total
2063 $2,676.
Q. Have you estimated your damages and loss on this flooded land in the year 1917, occasioned by these flood waters?
A. I have.
Q. Will you state to the court what the amount of such loss and damages are?
A. I have estimated my loss for the year 1917 as follows: 60 acres of corn at $20 an acre, $1,200; 100 acres of pasture at $3.00 an acre, $300; 45 acres of meadow at $4.00 an acre, $180; 31 acres of alfalfa at $20 an acre, $620; 200 acres of wheat at $18 an acre, $3,600; 55 acres of barley at $10 an acre, $550; extra cost of plowing 276 acres at $1.50 per acre, $414.
Q. Making a total of how much?
A. $6,864.
Q. Are these estimates made for the year 1917 on the kind of crops generally put in by you on these lands that were flooded?

A. They are.
Q. And in 1916 on what basis are they estimated?
A. On the same basis.
Q. As to the character of crops?
A. Yes, sir.
Q. What was the rental value of these flooded lands in the year 1916, that is on the assumption that they had not been flooded?
A. I should say fully what I have stated here.
Q. The rental value?
A. Yes.
Q. You mean $2,676?
A. For 1916.
Q. What—would that be the rental value to the owner or the total value of the crops produced there?

A. Well, looking over these items, with the exception
2064 of the alfalfa hay which would have to — reduced on account of the cost of putting it up, I would say that that would be the fair rental value. Corn was sold in the field at $18 an acre, and that dosen't include any harvesting, and pasture and meadow was certainly worth $3.00 an acre.

Q. As I understand you that would have been the rental value of the lands to you for that year 1916?
A. Yes, sir.
Q. Now tell the court what would be a fair rental value of these flooded lands for the year 1917?
A. I don't know that I need to revise these figures any that I have given.
Q. Do you mean to say that the fair rental value to the owner of the land would have been $6,864 for the year 1917, or do you mean that to be the net returns?
A. No, possibly those items of corn and wheat would need deduction for the cost——
Q. You don't understand my question.

(Question repeated.)

A. This would probably be the full net returns.
Q. What is the rule—what are the terms of rental here?
A. The land owner furnishes the seed and gets one-half and the tenant furnishes the labor and does the work.
Q. Is that true as to all cereal crops?
A. All small grain crops.
Q. Also as to corn?
A. No, not usually.
Q. What is the custom as to that?
A. I think about a one-third share, or $3.00 or $3.50 an acre for the corn.

2065 Q. Who gets that?
A. The landlord.

Q. Now what I want to get at is this: take it in accordance with the usual custom of renting lands in this vicinity, will you state what was the fair rental value of these lands for the year 1917? These flooded lands I am speaking about?

A. I have deducted from these figures read here $1,800 from the wheat, $275 from the item of barley, $600 from the item of corn, and I think the others need no deductions from them, which would leave a net rental value of about $4,189.

Q. To the owner of the land?

A. Yes, sir.

Q. In the year 1917?

A. Yes, sir.

Q. That is, as I understand you, do I understand you to mean that to be a net rental value to the owner?

A. Yes, sir.

Q. Now what do you do with those items you deducted; what becomes of those? Why did you make those deductions?

A. You asked me if I was renting it what would be the rental value.

Q. Don't tell me what I asked you?

A. That is the reason I answered you that I deducted one-half of the wheat because if I had been renting the land the tenant would have got half the wheat.

Q. Was that the share that went to the tenant?

A. Yes, sir.

Q. That would be the rental value for 1917?

A. Yes, sir.

Q. Now make the same calculation with respect to the year 1916 on the same basis and tell us what that net rental value
2066 would be?

A. I have made the same estimate.

Q. What was the fair rental value?

A. $2,676.

Q. Reckoned upon the same basis?

A. Yes, sir, I said I have made the same estimate. I wish to correct that. In the year 1916 I estimated twenty acres of alfalfa at $10 an acre as that was the first year.

Q. Now estimating it upon the same basis, tell the court what was the fair rental value of these flooded lands for the year 1915?

A. I have deducted on the same basis from the statement previously read one half of the $4,788 for the wheat, one-half of the $2,576, barley, one-half of the $450 oats, for the tenant's share, which would make a total of $3,907 deducted from the total given before.

Q. Leaving a net rental value?

A. Of $4,980.

Q. For the flooded lands for the year 1915?

A. Yes, sir.

Q. Now do I understand you to say that this method of renting is on the basis of division of the crops, one half *of* the tenant and one half to the owner?

A. Yes, sir.

Q. And that has been the rule ever since you have been here as far as you know?

A. Almost the invariable rule. I have only known of one or two exceptions.

Q. The almost invariable rule is division of the crops on the terms you have stated?

A. Yes, sir.

2067 Q. And taken into consideration in arriving at the rental value to the owner in these different years?

A. Yes, sir.

Cross-examination.

By Mr. Palmer:

Q. Upon this basis of rental value you have made an estimate of your damages here, $11,845? And for what purpose have you given those figures?

A. I don't know as I catch your meaning. I don't know what you mean by purpose.

Q. Can you answer the question?

A. I am perfectly willing to if I know what kind of an answer you want. The purpose of answering those questions was because I am put on the witness stand and they are propounded to me by counsel and it is proper that I should answer them and because they are true.

Q. Have you given these statements of your damages for the purpose and with the expectation of recovering the same?

A. Yes.

Q. From whom do you expect to recover those damages?

A. Eventually I suppose from the state of North Dakota. The state of Minnesota will re-imburse the state of North Dakota and the state of North Dakota will re-imburse us. That is the way I understand it.

Q. I have already interrogated you as to your contribution toward the expense of carrying on this litigation by the state of North Dakota, and I wish to ask if it is your understanding and expectation that if damages are recovered by the state of North Dakota from the state of Minnesota that the state of North Dakota will appropriate to you your damages as you have stated them here?

Mr. Pinkney: Objected to as incompetent, and immaterial,
2068 calling for an opinion of the witness on matters wholly immaterially and not within his knowledge.

A. Yes.

Q. How many acres of land did you lose the entire use of during the season of 1917 on account of water from the overflow of the Bois de Sioux river?

A. To the best of my judgment about 350 acres.

Q. You have stated here the loss to you of two hundred acres of wheat in the year 1917?

A. Yes, sir.

Q. Did you ever plant that wheat or any part of it?

A. No, sir.

Q. You assumed that you would have raised upon that two hundred acres of wheat how many bushels?

A. I don't know that I stated it in bushels. I think I stated it in dollars—$3,600.

Q. How many bushels of wheat did you assume that you would have raised upon the two hundred acres?

A. I think it would be between eight and nine bushels to the acre.

Q. You assume that you might have put in two hundred acres of wheat and that you might have raised between eight and nine bushel to the acre?

A. Yes, sir.

Q. And that you might have received from it $3,600?

A. Yes, sir.

Q. You further assume that you might have put in 55 acres of barley, and that you might have raised ten bushel to the acre and that you might have received $550 for it?

A. Yes, sir.

2069 Q. You further conjecture that you might have put in sixty acres of corn and might have raised twenty bushel to the acre and might have received a dollar a bushel for it. Mr. Pinkney?

A. Well, I would hardly call it conjecturing.

Q. What do you call it?

A. I call it an estimate.

Q. Now you estimate that you might have had thirty-one acres of alfalfa?

A. Yes, sir.

Q. And that it would have been worth?

A. Twenty dollars an acre.

Q. If you had it?

A. Yes, sir.

Q. Now you also assume that you might have raised a certain quantity of wheat in 1916, and a certain quantity of oats and a certain quantity of barley, and that you might have received certain prices for it?

A. That is your statement.

Q. Is that what you estimate?

A. I haven't said anything of that kind.

Q. Where did you get that $2,676 that you give as your damage for 1916?

A. Just out of those items I read to you.

Q. Where did you get those items?

A. I got them out of the facts in the situation and I read them to you, and I didn't say anything about wheat or oats or barley.

Q. In the year 1916?

A. No, sir.

Q. What are the items that you gave?

2070 A. 100 acres of corn at $18 an acre; 100 acres of pasture at $3.00 an acre; 52 acres of meadow at $3.00 an acre, 11 acres of old alfalfa at $20 an acre; 20 acres of new alfalfa at $10 an acre.

Q. Did you raise that corn?

A. No, those are the things I didn't raise. I couldn't raise because the ground was covered with water.

Q. Where then, I ask you again, do you get those items if they never had any existence?

A. Part of them did. The pasture and meadow and alfalfa certainly had a very probable existence. The corn of course is what I would raise, and that is a fair value of what other people could sell it for, and therefore I assume that is what it would be worth to me.

Q. Then I say again that that is what you assume that you might have had?

A. Yes, sir.

Q. Now in 1917 do I understand you to say that you had no use whatever as pasture, meadow or anything else of 350 acres of land that in other years prior to 1915 was tillable and usable in your farming operations?

A. That statement is approximately correct.

Q. I wish you would tell me where that land was? Where did it lay?

A. 117 acres in section 22.

Q. What part of 22?

A. The part there designated on the map as belonging to Pinkney, the west half of the southwest quarter and Lot 1.

Q. In section 22 there is a government lot 1?

A. Yes.

2071 Q. Of 37.90 acres?

A. Yes.

Q. No part of that lot 1 was used by you for any purpose in 1917?

A. No, sir.

Q. Then there is the west half of the southwest quarter of 22?

A. Yes, sir.

Q. Eighty acres?

A. Yes, sir.

Q. Do you say that no part of that was used by you for any purpose whatever in the year 1917?

A. Well, there was a little strip up through the middle—a little swail we cut a little hay off from.

Q. How many acres?

A. Ten acres. It might be about three fourths of a crop.

Q. Then there was seventy acres that you lost the use of on that?

A. No, I wouldn't figure it exactly seventy acres—seventy-two and a half acres. Three-quarters of the ten acres had a little hay on. One quarter was bare and had nothing on. Therefore we lost about seventy-two and a half acres of the eighty.

Q. Never any part of it bare before?

A. No, sir.

Q. Alright, where is the rest of the 350 acres?

A. The 119.5 acres on 27, described as the northwest of the northwest and lots 1 and 2.

Q. Lot 1, has 35.40 acres in it, lot 2 has *as* 44.10 acres and the northwest of the northwest *as* 40 acres, I take it?

2072 A. I believe that is correct.

Q. That is 119.50 acres?

A. Yes, sir.

Q. Now, on no part of that did you have any use whatever in the year 1917?

A. Not much.

Q. How much did you have some use of?

A. I took a few cattle down there to keep them from starving and they browsed on the cat-tails.

Q. Did they starve to death?

A. No, sir.

Q. Then you had some use of that land, that 119 acres, did you not?

A. I don't figure that the use was worth anything to me. It was more than off set by the bother that I had.

Q. Well do you want to say here that you had no use whatever of of any part of that 119.50 acres?

A. Practically none.

Q. What was the value of such use as you did have—how many acres did you take off?

A. I couldn't take off any acres. The cattle browsed over the whole tract and sometimes on part of the state of North Dakota, and sometimes down on the other farms, because the river had taken the fence away.

Q. Pasturage is valuable when you count it in as part of your damage. Is it of no value when you count it in as a part of your off set?

A. Yes, sir, I didn't say it was of no value.

Q. What did you say?

A. I said it was a little value, but I said the bother offset
2073 all the value, the bother I incurred trying to keep the cattle there without any fence. That off set the value I received from it.

Q. So you want to put in the whole 119 acres as a total loss do you? I want you to tell me about how many acres that you think you actually lost the use of on that 119. How many acres would you take off for that pasturage?

A. I wouldn't take off any.

Q. Then you want to leave it as a matter of record that you lost the total value of it?

A. Yes, sir.

Q. Of that 119 acres?

A. Yes, sir.

Q. How long did you keep those cattle there?

A. From the first of July until about a week or ten days ago.

Q. How many head did you have there?

A. At first I think I had twelve.

Q. How long did you have twelve head there?

A. Then I had three or four more and then I had two or three more and one time I had as high as twenty-one head down there.

Q. Average up somewhere about fifteen head through the summer?

A. Yes, sir.

Q. Is that all the pasturage they had, such as they had upon this land?

A. No, I told you they browsed around all over the country.

Q. Then the pasturage of the fifteen head through the summer upon this land was of no value? That is the way you want
2074 to leave the record?

A. Yes, sir.

A. About 60 acres on 21 on the east side of 21.

Q. Where was that 60 acres?

A. On the east side of 21.

Q. Which part of the quarter?

A. All the way across the quarter.

Q. You had no use of that whatever in 1917?

—. Fully 60 acres. There was probably more than that, but I did manage to plow a little strip down there and I have got a few shocks of fodder corn, a strip of about 6 acres, about in the middle of that tract.

Q. Where is the rest?

A. The rest of it is on 28.

Q. How much in 28, in what part, besides these lots?

A. A strip of about 20 acres just east of the middle line on the south side and a strip of about 36 acres on the north side.

Q. That you had no use of whatever?

A. Yes, sir.

Q. In the season of 1917?

A. Yes, sir.

Q. Now, this land that you described in 22 as lot 1, and the west half of the southwest quarter is what is designated upon the Government plat as marsh or swamp land, is it not?

A. I have never seen any swampy conditions there until the year 1915 since I have known it.

Q. Have you ever seen the government plat?

A. I don't know that I have.

Q. Now, the land in 27, described as government lots 1
2075 and 2 the northwest of the northwest of 27, is land that is designated on the government plat as swamp or marsh land, is it not?

A. I don't know that to be the fact.

Q. I asked you before in general what you paid for this land. I want to ask you more specifically what you paid for this land in section 22, described as government lot 1, adjacent to the Bois de Sioux river?

A. I paid $36.50 an acre, for it in 1902.

Q. Did you pay for the acreage mentioned in that lot 37.90?

A. Yes, sir, I did.

Q. What did you pay for the land in 27, described as Government lots 1 and 2 and the northwest of the northwest of 27?

A. The same, $36.50 an acre.

Q. Did you pay for the acreage mentioned in the lots?

A. I did.

Q. You acquired this land in the year 1902?
A. Yes.
Q. You never had seen it prior to that time?
A. No, sir. Not prior to that year.
Q. Nor had you seen any part of this country surrounding it prior to 1902?
A. No, sir.
Q. Now when you paid $36.50 an acre for that in 1902, did you buy with it some improved land, that is having buildings upon it?
A. Yes, sir.
Q. When you bought the land in 27, you bought with it the northeast of 28, which had very good improvements in the way
2076 of buildings, fences and so on?
A. Oh, no, no value at all in fences—some value in buildings.
Q. Some value in buildings?
A. Yes, sir.
Q. And that land was improved and cultivated at that time?
A. It was all cultivated.
Q. So that the $36.50 an acre in 1902, included this improved quarter in section 28?
A. Why, the same price for all of it.
Q. Now, you bought with this land in section 22, the southeast quarter of section 21?
A. Yes, sir.
Q. At the same time in 1902?
A. Yes, sir.
Q. That was an improved farm?
A. No, sir.
Q. It was cultivated?
A. Yes, but no buildings on it; no improvements in the way of fences or buildings.
Q. In 1902, what was well improved farm land selling for upon the market in this vicinity remote from the river?
A. About what I paid for it. I paid about the top price.
Q. Then lands that were not adjacent to this river, and within a half mile of Fairmount, well improved, were selling on the market at $36.50 an acre in the year 1902?
A. About that price. I wouldn't care to say that all lands sold at just exactly $36.50 an acre.
2077 Q. Well you paid the top price?
A. Yes, sir.
Q. That was the top price for lands within a half mile of Fairmount, well improved farming lands not adjoining this river, in the year 1902?
A. I think so.
Q. And these lands had been settled ever since about the year 1888, or along in there according to your information?
A. Yes, sir.
Q. What is the place where you live? The description of it?
A. North half of the northwest quarter of 28.

Q. What year did you acquire that?
A. 1912, I believe.
Q. Did that have improvements upon it when you acquired it?
A. Very poor.
Q. Some buildings?
A. Yes.
Q. About the same character as those on the northeast of 28?
A. Well, the house was about as good as the house on the northeast of 28, but the out buildings and sheds amounted to practically nothing, and the fences also.
Q. Nor the fence either?
A. No, sir.
Q. What did you pay for that in 1912?
A. $93.75 I think it figures out $7,500 for the eighty.
Q. Was that about the fair market value of land improved as that was in 1912?
2078 A. I think so.
Q. About three times the value that they were in 1902, you would say?
A. A little less that three. Three times 36 is a little more than 93.

(Adjournment was taken until 9:30 A. M. Nov 6, 1917.)

Hearing resumed at 9:30 A. M. Nov. 6, 1917, all parties being present.

Cross-examination of Charles R. Pinkney, continued by Mr. Palmer:

Q. From whom did you acquire lot 1, and the west half of the southwest quarter of Section 22?
A. Sumner R. Clark.
Q. Were there ever any buildings erected upon this land?
A. Not to my knowledge.
Q. I show you defendant's Exhibit 107, being the plat of the government survey of this land, from which it appears that government lot 1, and something like 40 acres in the south portion of the west half of the southwest of 22 is designated as marsh or swamp lands, and I will ask you if you knew that fact when you purchased this land?
A. I did not.
Q. I understand you to say that you didn't examine the government plat and survey at any time?
A. I have not.
Q. When you purchased this land in 1902, the season was very dry, was it not?
A. No, sir, I wouldn't call it so. I have a very forcible
2079 recollection of dodging a great many rain storms that summer as I was driving about through the country.
Q. Did you crop this land in 1902?

A. No, sir.

Q. Did Mr. Clark, from whom you purchased it?

A. Yes, sir.

Q. What crop did he have on this lot 1, of section 22?

A. My recollection is that a portion of it was in flax and a portion of it was lying there for summer fallow. He had a tenant on there.

Q. What do you mean by saying it was lying there for summer fallowing?

A. Why it was quite a customary thing, in an early day, more so than it is now, for the people with large area of land to leave a portion of it for summer fallowing to try to subdue the wild seed that was on it.

Q. Do you mean that that portion wasn't cropped that year?

A. Yes, sir.

Q. How large a portion of lot 1 was that?

A. I am unable to state.

Q. Do you think it would comprise as much as one half of it?

A. No, sir.

Q. Can you state with any greater definiteness?

A. I cannot.

Q. I assume then that you are not able to state the portion that was in flax that year on this particular piece?

A. My recollection is that it was the north half of the strip.

2080 Q. In flax?

A. Yes, sir.

Q. Do you mean the north half of Lot 1?

A. Yes, sir.

Q. Flax is a late crop? That is, it is sown quite late in the season?

A. Not necessarily so.

Q. What is the fact as to this particular flax that you saw?

A. As to the time of its being seeded?

Q. Yes.

A. I am unable to state. I didn't see it until about harvest time.

Q. Flax is uaually about the first crop that is put in upon breaking of new land, is it not?

A. Well, not invariably so.

Q. I think if they attempt to raise a crop the same year the breaking is done it is usually flax.

Q. Do you know the fact as to this flax on this land?

A. I don't.

Q. Had the south half of this land which you say was lying there for summer fallowing unused been cropped the previous year?

A. Previous to the year 1902?

Q. Yes.

A. I am unable to state.

Q. You say that summer fallowing is for the purpose of killing noxious weeds upon the land?

A. Partly that and partly—sometimes it is the last resort. I

suppose it is well known to most everyone that in the early
2081 days it was harder to get all the land under cultivation every year because tenants were few and the farms very large.

Q. Was this land grown up to weeds, this south half of Lot 1?

A. Why there was the usual growth of a season upon it when I purchased it.

Q. Have you any knowledge of any crops having been produced upon it prior to your acquisition of it?

A. I have not.

Q. The following year, 1903, was that a wet year?

A. I think about the normal rainfall, if I recollect right.

Q. Did you crop this lot 1 that year?

A. I think it was almost all in crop.

Q. What kind of crop?

A. Wheat and potatoes. I remember there were some potatoes down there.

Q. What portion of it, if any, was not cropped?

A. A strip along the southern edge and a little strip along the eastern edge.

Q. Adjacent to the river?

A. Yes, sir.

Q. Did the river overflow this lot 1 that spring of 1903?

A. No, sir.

Q. Any part of it?

A. No, sir.

Q. What quality of crop did you have on that land in 1903?

2082 Mr. Pinkney: Objected to as wholly incompetent, immaterial and too remote to have the slightest bearing upon this case or the issues involved.

A. I think about the usual quality that was on all the lands in this neighborhood.

Q. Did you crop it in 1904?

A. I did.

Q. All of it?

A. Yes, sir.

Q. 1905?

A. Yes, sir.

Q. All of it?

A. Yes, sir.

Q. In what crop?

A. My recollection is not clear as to 1905. I know what was on it in 1904. I had wheat on there.

Q. In 1906 did you crop it?

A. Yes, sir.

Q. All of it?

A. Yes, sir.

Q. A good crop?

A. I have no very distinct recollection. It may be possible that that was seeded down in the season of 1905 and was in hay in 1906.

I began seeding my land quite extensively as soon as I acquired it and I am not just sure whether that was seeded in 1905 or not.

Q. Did you seed it down about the year 1905?

A. 1905 or '06?

Q. How long did it remain seeded down and uncultivated?

2083 A. I think until the fall of 1910.

Q. Was it overflowed in the spring of 1906?

A. Oh, yes, early in the spring it was. That was the spring we had the freshet when the snow went off.

Q. How much of your land was overflowed that spring?

A. About four hundred acres, four hundred and fifty possibly

Q. Now when you bought this land in Twenty-two you bought with it the southeast quarter of section twenty-one?

A. Yes, sir.

Q. Did that have any buildings on it?

A. No, sir.

Q. Did you buy that from the same man you bought the land in 22 from?

A. I did.

Q. Where did he live?

A. Peoria, Illinois.

Q. Do you know how long he had held that land?

A. Ten years, I think.

Q. Do you know whether the southeast quarter of twenty-one had been cultivated prior ro your acquisition of it?

A. I don't.

Q. In 1907 did you have any crop on this land in twenty-two, described as lot 1 and the south portion, the south forty acres of the west half of the southwest?

A. Yes, sir.

Q. What did you have?

A. As I have already stated I am not certain whether it

2084 was seeded as early a date as that, but I think it was in grass at that time.

Q. Was the south forty acres of the west half of the southwest also seeded down?

A. Yes, sir.

Q. Was it overflowed in the spring of 1908?

A. No, sir.

Q. Was it in the summer of 1908?

A. Yes, sir.

Q. About how many acres of that land was flooded in the summer of 1908?

A. Somewhere about 240 acres.

Q. What time in the summer of 1908?

A. About the 1st of July.

Q. What was it flooded from?

A. By stoppage of the river channel at what is known as the "high bridge" between sections 10 and 15.

Q. From the overflow of the Bois des Sioux river?

A. Stoppage of the Bois des Sioux by reason of the floating debris lodging under the bridge.

Q. That is what you attributed it to?

A. Yes, sir.

Q. But the water came from the overflow of the Bois des Sioux river?

A. Yes, sir.

Q. And likewise in the spring of 1906 the water came from the overflow of the Bois de Sioux river?

A. Yes, sir.

Q. The land in section 27, described as lots 1 and 2 and the northwest quarter of the northwest quarter, is the land which was overflowed among others in the years 1915 and 1916?

2085 A. Yes, sir.

Q. I call you- attention to the government plan and call you- attention to the fact that these lands together with a strip of about sixty acres on the east side of the northeast quarter of section 28 is designated as swamp or marsh land, and will ask you if you knew anything about that at the time you acquired the land?

A. I did not.

Q. And that is practically the land which you have described as overflowed in these years?

A. It is not.

Q. Will you tell me again what land it was in section 27 that was overflowed in 1915 and 1916?

A. It included those lands you have described and about twenty-five acres more on section 28, about eighty-five acres on section 28 and about 95 or 100 in 1916.

Q. And the overflowed area then extended somewhat westerly of the land that is described here on the plat as marsh and swamp land?

A. West of what you have described as the sixty acres.

Q. Were there ever any buildings erected on any part of this land in Section 27?

A. Not to my knowledge.

Q. On the northeast of 28 you say there were some poor buildings when you purchased it?

A. There were very good—a very fair barn and a fair house, somewhat out of repair.

2086 Q. Tenant occupying it?

A. Yes, sir.

Q. That year that you bought this land, 1902, did this land in 27 have any crop upon it?

A. Yes, sir.

Q. What kind?

A. I think it was all wheat.

Q. How near the river was it cultivated?

A. Right up to the first bench.

Q. What do you mean by the first bench?

A. I mean the first little raise of ground that is usually apparent after you get back from the river, the strip, that is usually left for hay ground.

Q. You think it was all cultivated or in wheat that year?
A. Most of it; not all; the most of it.
Q. What quality of wheat was there upon it?
A. My recollection is that he didn't cut any of it. The wild oats was so thick that he didn't think it worth harvesting.
Q. There was no crop then cut upon this land in 27 in 1902 when you purchased it?
A. To the best of my recollection there was none of it cut for the reason I have stated.
Q. How was that land westerly of this land, the strip of sixty to eighty acres along the east side of the Northeast quarter of 28?
2087 A. That had good crops on it.
Q. What kind of crops?
A. I am unable to state. I think there was wheat and corn and barley, all three on that part of 28.
Q. In 1903 did you crop this land in 27?
A. My recollection is not clear on that matter.
Q. You cannot now recall whether you cropped this land in section 27 or not in 1903?
A. I do not. I did not do the work myself that year. The tenant that was on it before still remained. While I was up here he put it in crop in 1903, consequently it is not so forcibly impressed on my memory as if I had put the crop in myself.
Q. 1904?
A. Yes, sir, we had it all in crop in 1904.
Q. Was that a dry or wet year?
A. Just seasonable is my recollection.
Q. In 1905 did you have any crop on this land in 27?
A. Yes, sir.
Q. What kind of crop?
A. I had wheat and flax to the best of my recollection.
Q. Was the flax on new breaking?
A. No, sir.
Q. On the old land?
A. Yes, sir.
Q. Why did you raise flax on the old land?
2088 A. We raised flax on the old land because we looked over the whole farm and apportioned the crops where we thought we could best handle them, and there wasn't any reason why I shouldn't put flax there.
Q. And there was a reason why you should?
A. Probably, or I wouldn't have done so.
Q. In 1906 did you raise any crop on this land in 27?
A. Yes, sir.
Q. Was that land overflowed in the spring of 1906?
A. Yes, sir.
Q. All of it?
A. Yes, sir.
Q. And likewise the land over in 28?
A. Yes, sir.
Q. What kind of crop did you raise on the land in 27 that year?

A. A good crop.
A. Wheat.
Q. You sowed it after the water had receded?
Q. What variety?
A. The water only remained three or four days.
Q. 1907 did you have a crop on there?
A. Yes, sir.
Q. What kind?
A. I think it was seeded in the year 1906 and 1907 it was in grass and we had an excellent crop there.
Q. All the land in 27?
A. Yes, sir.
Q. How long did it remain seeded down?
A. I think it remained until 1911 possibly, or possibly 1912; the fall of 1911 I think possibly I broke it up, that is a portion of
2089 it, the northwest of the northwest. The *The* other is still seeded down.
Q. It is seeded down yet?
A. Yes, sir, that is the piece I have been speaking about, a portion of it.
Q. Now 1911 and 1912 were extremely dry years, were they not?
A. No, I think not. We had seasonable rains. I remember we had some extremely heavy rains in 1912.
Q. 1911?
A. I don't recall just at present the particular instances when the rains all came as I do in 1912. My Recollection is that 1911 was the drier of the two.
Q. That is the year Lake Traverse went dry, or practically so?
A. Then I have made a good guess.
Q. I am asking for your recollection and not for your guess?
A. My recollection is that 1911 was the drier of the two.
Q. And that year that you broke up again the Northwest of the northwest of 27?
A. I stated I wasn't sure whether it was 1911 or 1912, but my judgment is that I broke it up in the fall of 1911.
Q. And the land to the south of that, Lots 1 and 2, you didn't break again?
A. No, sir, I had fenced that and was using it for pasture.
Q. Nor has any part of it ever been broken since.
A. No, sir.
2090 Q. I understood you to say in your prior testimony that 1916 was not a wet year?
A. Oh, no, I said it was a wet year, but not any wetter than some other years.
Q. It has been shown in the testimony here that the precipitation that year was the greatest on record in this part of the country, Mr. Pinkney. You still adhere to your statement that it was not a particularly wet year, do you?
A. The statement that I have made, yes, sir.
Q. You are not prepared to accept the records of the precipitation for that year?

Mr. Bronson: Objected to as argumentative, not calling for a statement of fact and assuming a state of facts not in the record.

A. I have only stated my best judgment in the matter. I am not questioning the records at all?

Q. Now with the highest precipitation on record for the year 1916, and with the fact that there was practically a failure of crop upon all the territory surrounding your lands, you are yet prepared to say that you would have had on this flooded land 100 acres of corn worth $18 an acre in the year 1916?

A. Yes, sir.

Q. And you would have had 100 acres of pasture at $3.00 an acre?

A. Yes, sir.

Q. Where did you assume that that pasture would be, that 100 acres?

A. Right where I have described it as being.

2091 Q. On this section 27?

A. Yes, sir.

Q. That is land that is designated upon the government plat here as swamp?

A. Yes, sir, if it is so designated.

Q. Where did you assume that 100 acres of corn worth $18 an acre would be?

A. I haven't stated definitely where that would be. Of course we would use our best judgment about locating the corn.

Q. It might be on some of this land that was overflowed and it might not?

A. Possibly.

Q. Why wasn't it on some of the land that was not overflowed?

A. It is usual when you begin seeding operations in the spring to take the land that is in condition to seed and put your wheat in first. Later you put in your corn. And a man would be very foolish to put his corn in on the dry land early in the spring and wait until later and take the wetter ground to put his wheat on.

Q. It would be somewhat foolish if he had a season where the precipitation is the highest on record to wait and put his corn in on swamp land wouldn't it?

A. If he knew there was such land there, as swamp land, but I didn't know there was any such land there.

Q. You had never seen any part of it overflowed in all your residence there?

A. I had been using it for fifteen years and never discovered it was swamp land.

Q. Did you ever discover any water on it?

2092 A. I have stated when I discovered water on it, in the spring of 1906 and summer of 1908.

Q. Now in 1916 you figured 52 acres of meadow at $3.00 an acre?

A. Yes, sir.

Q. Where did you assume that 52 acres of meadow would have been?

A. Right where it had always been. Twenty-two acres wild meadow and thirty acres of tame meadow on the east side of the southeast corner of 28.

Q. On the east side of the southeast quarter of 28?

A. Well, I will correct myself by saying it was in the southeast quarter. My first thought was that it ran clear across the east side of the quarter, and then I remembered it only runs 120 rods from the southeast corner.

Q. This part of the strip marked here as swamp land, is it?

Mr. Benson: Objected to as asking the witness to testify to what he claims the book to show, which book has not been shown to the witness.

A. Yes, sir.

Q. Where did you assume that this eleven acres of old alfalfa would be that you didn't have, but that you lost?

A. On the north end of the second thirty rod strip on the east side of Section 21.

Q. This is rather low land?

A. No, sir.

Q. The southeast corner of the southeast quarter of Section 21 appears here upon the plat to be swamp land. That is not low land?

2093 A. It is lower than where the alfalfa is, but not swamp land by any manner of means.

Q. And the new alfalfa, twenty acres, where did you figure that would be?

A. I know where it lay.

Q. Where.

A. Right in the northwest corner of the west half of 22.

Q. Well, you didn't own the northwest quarter of 22?

A. The north end of the southwest quarter of 22 I mean.

Q. Was that alfalfa there?

A. Yes, sir.

Q. Did you get it?

A. We got it drowned.

Q. You mean you had some new alfalfa?

A. I had twenty acres of alfalfa in the barley there and it was an excellent stand when the water came up over it.

Q. You had twenty acres of new alfalfa?

A. That is correct.

Q. Of new alfalfa on the west half of the southwest quarter of 22?

A. Yes, sir.

Q. That you seeded in with barley?

A. Yes, sir.

Q. In 1915?

A. Yes, sir.

Q. And that was there in the spring of 1916?

A. No, sir, that wasn't. It was all dead.

2094 Q. Didn't you count that in your 1915 damages?
A. Only the value of the seed and labor putting it in, $2.00 an acre.
Q. And then you figure you lost it again in 1916?
A. Yes, sir.
Q. And in 1917?
A. Yes, sir.
Q. So you lost that same alfalfa three different years, Mr. Pinkney?
A. I lost the crop there.
Q. Do you think you are going to lose it again next year?
A. I am pretty sure I will.
Q. That same alfalfa?
A. Yes, sir, and probably lost it for all time.
Q. Well, don't you think we had better put in an indefinite number of years that you are going to lose that alfalfa?
A. I will leave our attorney to look after that.
Q. Now the 1917 crop that you didn't have, but that you lost, did that crop lay on this overflowed land next to the Bois de Sioux river that you have described in these other questions?
A. That would have been in crop undoubtedly, those overflowed lands, had they not been flooded.
Q. In other words, Mr. Pinkney, if you had a crop on this land in 1916 and 1917, then you have had a crop?
A. That is self-evident.
Q. And if you had placed it in the hands of a tenant and he had had a crop this year you would have had half of that crop?
2095 A. Yes, sir.
Q. That is the way you have figured your damages?
A. Yes, sir.

Redirect examination.

By Mr. Pinkney:

Q. I want to ask you whether or not the flood waters of 1915, 1916 and 1917 which you have testified were over these lands you have described had any effect, any deterrent effect or injurious effect upon the arability of the lands?
A. Yes, sir, it had.
Q. Was that effect injurious or beneficial?
A. Very injurious, of course.
Q. To what extent, or how much per acre do you estimate such injurious effect to be on these overflowed lands?
A. I should say fully $5.00 per acre.
Q. On four hundred and fifty acres?
A. Yes, sir.
Q. Now will you tell the Court what items you take into consideration in fixing that amount of damage per acre?
A. The extreme difficulty and increased labor in plowing it, of getting it subdued so crops can be put on there, and the harmful

effect of the noxious weeds that are there and will continue there for a couple or three years.

Q. Did these flood waters have any effect upon these lands with respect to working them after the flood waters receded?

A. They certainly did.

Q. What was the nature of these difficulties that were produced by these flood waters?

2096 A. Why the enormous growth of noxious weeds. They are so difficult to plow, and after being plowed there is an enormous amount of labor required to get the land subdued so you could seed it, and the persistence of those weeds in the soil for two or three years is bound to reduce the crop returns.

Q. How has it affected the labor of turning the soil over?

A. It has cost fully double to plow that land what it would have had it been in its ordinary course of cultivation.

Q. It it hadn't been for the flood waters?

A. Yes, sir.

Q. What would be the expense of plowing such lands if they had not been flooded by these waters?

A. From $1.25 to $1.50 an acre.

Q. And what would be the expense now, of plowing it?

A. About $3.00 an acre.

Q. So there would be a dollar and a half additional expense in the plowing of it alone?

A. Yes, sir.

Q. You may look at this photograph now shown you, marked Complainant's Exhibit 27 and state if you know where that photograph was taken?

A. I do.

Q. Were you present at the time?

A. Yes, sir.

Q. Where was it taken?

2097 A. Taken at the—nearly the west side of the north end of the west half of 22.

Q. About when?

A. October 8, 1917.

Q. Is that part of the land owned by you?

A. Yes, sir.

Q. Part of the lands that were flooded in 1915, 1916 and 1917?

A. Yes, sir.

Q. Is that a true and correct representation of the premises which the picture includes?

A. Yes, sir.

Q. As they appeared at that time?

A. Yes, sir.

Q. Tell the court what that prominent growth shown in the photograph is?

A. Cat-tails.

Q. Now during the time you have owned that land up to the time of these flood waters was there ever any such a growth as that on these lands or any of them?

A. No, sir.

Mr. Pinkney: In connection with the testimony of this witness we offer Exhibit 27 in evidence.

Q. Now you may tell the court whether or not practically the same condition as to the growth of cat-tails and other noxious weeds manifested itself on practically all of this land of yours that was flooded?

A. Yes, sir.

Q. About what is the height of these cat-tails? Of this cat-tail growth on these lands?

A. They vary from about two feet to four and a half.

2098 Q. Give the approximate mean height?

A. I should say three feet and a half in height.

Q. And what are the dimensions of the stock as an average?

A. An inch to and inch and a quarter.

Q. In the cross-section?

A. At the base.

Q. Are they soft and pliable, a growth that yields readily and easily to plowing?

A. No, sir, they are very stiff.

Q. Hard to break down sometimes?

A. Yes, sir.

Q. Now I want to ask you this question. In the summer of 1914, prior to the time any of these flood waters manifest- themselves upon your lands, what did you regard as a fair market value of these lands of yours that were flooded?

A. $100 an acre.

Q. What do you regard is the value of the lands in the future since these flood waters manifested themselves in the fall of 1914, 1915, 1916 and 1917?

A. They have no market value whatever.

Q. What do you mean by that, that they are not salable at any price?

A. I don't think so. You couldn't sell me any of it at any price.

Q. I don't want you to confine it to yourself, but confine it to your knowledge of what you regard their value to be?

A. Well, to my knowledge there is none of that land changed hands since these flood conditions are apparent.

2099 Q. Would the fact of the depreciation in value of these flooded lands have any effect on the value of the land you owned that was not flooded?

A. No, I think not.

Q. If you had a 160-acre tract on which were valuable improvements consisting of dwelling house, barns, granaries, shed and so forth, and 120 acres of such quarter section was subject to these flood waters and covered by these flood waters in 1915 and 1916 would that have any effect upon the market value of the forty acres remaining?

A. Oh yes, in that case it certainly would.

Mr. Palmer: Objected to as not the proper measure of damages, assuming facts not established by any testimony in the case.

A. It certainly would, viewing it from that standpoint. My first answer was made thinking about other tracts wholly outside the flooded area.

(Question repeated.)

A. It certainly would.

Q. Why do you say it would?

A. Because no one would buy a little corner of a quarter section where the rest was not tillable land.

Q. Let us assume, instead of being a little corner, it is 40 acres?

A. Well even forty acres, the effect would be the same.

Q. What in your opinion would it depreciate the value of such forty-acre tract, how much per acre, assuming it to have been worth $100 an acre before?

A. $50 an acre.

2100 Q. Then your judgment is it would cut down the value of the unflooded protion of the land fully fifty per cent?

A. Yes, sir.

Q. Counsel for the defendant has referred to what he has designated as a government survey and plat in which certain of these lands owned by you are designated as swamp and overflow lands. You may tell the court what the fact is as to whether or not they are swamped and overflow lands?

A. I have never seen any such.

Q. I didn't ask you that. Just tell the court whether or not they are swamp and overflow lands?

A. They are not in my judgment.

Q. And you know that fact from having owned and worked the land for a period of approximately fifteen years?

A. I do.

Q. And during that fifteen years, as I understand you, the so-called and so-designated swamp and overflow lands have produced crops every year?

A. Yes, sir.

Q. Now when I say crops I refer to cereal crops as well as pasture and hay lands. Is it true they have produced all kinds of crops?

A. Yes, sir, they have.

Q. On your cross-examination you stated in response to a question from counsel that you seeded certain portions of this land?

A. Yes.

Q. Tell the court what your purpose and object was in seeding the land *was*. Was it because they were of a wet, marshy character or what was the reason?

2101 A. The reason was because they were badly infested with foul seed, wild oats.

Q. What would be accomplished by seeding it with respect to such growths?

A. After a few years remaining in meadow and pasture the foul seed rots and you break it up and have clean land.

Q. In other words seeding these lands has a tendency and does in fact renew and cleanse them of foul weeds?
A. Yes, sir.
Q. Did it accomplish such purpose in your case?
A. It did.

By Mr. Bronson:

Q. The rental, value, as you have stated, Mr. Pinkney, for the years 1915, 1916 and 1917, was what it would have been if the lands had not been flooded?
A. Yes, sir.
Q. As the conditions were in the years 1915, 1916 and 1917, was or was not there any rental value whatsoever for such lands so flooded?
A. There was not.
Q. Judge Pinkney asked you a question or two about the arability of the land, and I desire to supplement that by asking you the general question of what is the cost of restoring these lands so flooded in 1915 and 1916 to their former condition. By this I mean to include and consider the damage and effect of the floods on the arability or ability to farm these lands for agricultural purposes?
A. Isn't that the same question.
Q. I want it stated in dollars and cents if you can?
2102 A. I think I stated it cost $5.00 an acre.

By Mr. Pinkney:

Q. You spoke about your lands being flooded in July, 1908. Was that flooding due to the obstruction of the bridge to which you have already testified when you were on the stand in the case at St. Paul?
A. Yes, sir.
Q. Now as I understand it, after that obstruction was removed the waters immediately receded?
A. Yes, sir.
Q. And done no damage to your crops?
A. Oh, yes. There was some damage.

Mr. Bronson:

Q. What has been your business all your life, Mr. Pinkney, principally?
A. Farmer.
Q. Did you farm in Illinois before you came to North Dakota?
A. I did.
Q. These lands that you have described in the evidence consist of a total of 637 acres?
A. Yes, sir.
Q. Which you have farmed as a farm in this state since you came here and bought them?
A. Yes, sir.

Q. Counsel has asked you many questions concerning the nature and character of some of these lands in the flooded territory, particularly with reference to Exhibit 107, as to its marshy character. I want to ask you the general question whether any of this land that is owned by you and that has been flooded as you have de-
2103 scribed in the evidence is in any way, shape or form comprised or consists of a marsh?

A. No, sir.

Q. You know what a marsh is?

A. I think so.

Q. I will ask you to state whether or not, as we use the word marsh in this territory or in any other territory, this land that is used for raising crops of wheat oats and barley or other cereals is a marsh?

A. I think not.

Q. You understand the word from your experience as a farmer, do you not?

A. Yes, sir.

Q. In other words, crops of wheat, oats and barley in North Dakota or any other territory are not raised in marshes, are they?

A. No, sir.

Q. Are you able to state in the years you lived on this land whether or not there is any land that has been so flooded in the years 1915 and 1916 and 1917 owned by you is a marsh?

A. There is not.

Recross-examination.

By Mr. Palmer:

Q. Is your land on the market at the present time, Mr. Pinkney?

A. No, sir.

Q. Never put it on the market, have you, of recent years?

Mr. Bronson: That is objected to as improper recross-
2104 examination.

A. Yes, I think I did put it on the market once.

Mr. Palmer: When?

A. I think it was in the spring of 1910.

Q. Have you put it on the market since then?

A. No, sir.

Q. Any part of it?

A. No, sir.

Q. This 152 acres of pasture and meadow that you have seeded down, you think it will cost $5 an acre to make those pastures and meadows again?

A. Yes, sir.

Q. And you think by those floods of 1915 and 1916 these have been totally obliterated and destroyed forever?

Mr. Pinkney: He didn't state that as to the land, Mr. Palmer.

Mr. Palmer: That is what he said, he said they had no market value whatever.

A. That is a different thing, I should think, as to the lands being totally obliterated.
Q. Will you answer the question?

Mr. Bronson: Read the question.
(Question is read by the reporter.)
A. I do not.

Mr. Palmer:

Q. Do you think that with an expenditure of $5 an acre they can be restored the same as they were before these floods?
A. No, sir.
Q. Do you think that those lands will ever and can ever be restored to the condition that they were before 1915 and 1916?
2105 A. That would depend upon climatic conditions.
Q. You had no great difficulty in restoring these lands after they were flooded in the year 1908, did you?
A. The flood only remained four weeks then.
Q. Will you answer the question?

Mr. Bronson: I submit that he has already answered it.

A. Yes, I had considerable difficulty even then.

Mr. Palmer:

Q. Do you think that the flooding of 1908 detracted from the value of the land $5 an acre?
A. Yes, sir.
Q. Do you think that the flooding of the land in 1906 detracted from its value $5 an acre?
A. No, sir.
Q. How much?
A. Not any.
Q. So you think that those lands have not at the present time nor will they ever have again any market value whatever, Mr. Pinkney?
A. I haven't so testified.
Q. What do you want to testify in that respect?
A. I want to testify——

Mr. Bronson: That is objected to as an improper question to the witness.

A. I mean to testify that as long as the present threat of overflow exists they have no market value.

Mr. Palmer:

Q. You assume then in answering that question that there will be a return of those flood conditions each and every year?
A. No, sir, I don't assume anything of the kind.

2106 Q. There was no recurrence of those flood conditions in the summer of 1917, was there?

A. Yes, sir, continued until, well up to the first of August, the flood conditions.

Mr. Bronson:

Q. You mean 1916?

A. 1917, I mean.

Mr. Palmer: Then your land was overflowed and flooded there from the overflow from the Bois de Sioux river until the first of August, 1917?

A. Yes, sir.

Q. Water standing upon it?

A. Yes, sir.

Q. Have you plowed those lands, such lands as you had previously plowed?

A. Some of them, they are not all plowed.

Q. There is no reason why they can not be plowed, is there?

A. Except the extreme difficulty of plowing it and the extra labor involved. I would have had it all plowed long ago under ordinary conditions but we can hardly plow half as much in a day as we ordinarily do.

Q. Are cat-tails noxious weeds?

A. I don't know as I am prepared to answer that; they are devilish obnoxious to work amongst.

Q. They can be plowed under readily?

A. Not by any manner of means readily.

Q. It is practically an impossib-lity to plow them under and there have been none plowed under on any of this over-flowed area?

A. There has been hundreds of acres plowed under but it is not an easy matter by any means.

2107 Q. And I presume after they are plowed under this growth has some fertilizing value?

A. In due course of time when they become fully rotted they would have but I wish somebody else had that value at present instead of myself. I would give a good many dollars if they wasn't there under my land.

Q. But the substance of your testimony is that these lands are absolutely without market value at this time?

A. Under the present condition, yes, sir.

Q. And that so far as you know or anticipate they never will again have any market value?

A. No, I am not prepared to state that.

Q. If next season is as dry as this season has been won't those lands be of as much market value as they ever were?

A. I do not expect we will get 25 per cent of a crop if we have another dry season as dry as this on those lands.

Q. That is what you assume about it?

A. That is my judgment about it.

Q. And if we should have a succession of dry years like 1911,

1912, and 1913, I suppose your assumption is that you will get no crops from these lands?

A. I haven't so stated.

Q. Isn't it as fair to assume that 1918 will be as dry and 1917 as it is to assume that 1918 will be as wet as 1916?

Mr. Pinkney: Object to the form of the question as argumentative.

A. I am not prepared to enter into such mental gymnastics as that. I don't know what you are getting at.

2108 Mr. Palmer:

Q. You prefer your own kind of mental gymnastics when you are asking for damages?

A. I am not indulging in any mental gymnastics, I am indulging in cold facts.

Q. Then I will ask you again, isn't it as fair to assume that 1918 will be as dry as 1917 as it is to assume that it will be as wet as 1916?

A. Possibly so.

Redirect examination.

By Mr. Pinkney:

Q. You speak in response to a question by counsel for the defendant of the threatened menace affecting the market value of these lands. What menace did you refer to?

A. The menace of those recurring floods every time there is anything like an ordinary rainfall.

Q. Which floods do you refer to?

A. The floods we have suffered from from the waters coming up from the south——

Q. In the years 1914, 1915, 1916 and 1917?

A. Yes, sir.

Recross-examination.

By Mr. Palmer:

Q. Your land was flooded during the crop season of 1914 then?

A. No, sir.

Q. I understood that year to be included in Judge Pinkney's question: you didn't intend to include it?

2109 A. The floods began later in the fall after the crops were saved.

Q. But they did not recur in the spring until after the crops were planted?

A. No, sir.

Q. Late in May or the first of June, that is when the rains began, wasn't it?

A. No, sir, the rain did not begin to be heavy until August or first of September.

Q. There was no rainfall practically in May and June and July 1915?

A. I haven't so stated, I said the rainfalls were not heavy until the fall.

Q. There was no unusual rainfall at all in 1915 before the month of August?

A. Not in this neighborhood, I think.

Q. And this flooded condition reached its height along the 20th of July?

A. I think so.

Q. Take the three years, 1914, 1915 and 1916, do you not recall that these three years were years of increasing precipitation and the greatest amount — precipitation that you had known since you have been in this country or this section of the country?

A. I shouldn't state that was a fact in regard to 1914 and 1915.

Q. Will you give me the years, the three years, in which there was as great an amount of precipitation and increasing precipitation as it was in those two years?

A. I should say 1909 there was considerably heavier precipitation than in 1914 or 1915 except in the fall of 1915.

2110 Q. Give me three years in succession.

A. I don't know that I can do that off hand. 1914 was certainly considerable heavy rainfall.

Q. You asume that with constantly increasing precipitation in 1914, 1915 and culmonating — 1916 in the highest rainfall known, that had nothing whatever to do with the presence of water upon your lands?

Mr. Pinkney: We object to the question as assuming a fact not testified to by the witness and improper in form.

A. My answer to that would be that having seen other years of equal precipitation or even greater than the first two, that I can not reasonably assume that the waters came from the rainfall.

Mr. Palmer:

Q. What other year do you say had a rainfall as great as 1916?

A. I didn't testify as to 1916. I testified that in my judgment that there was fully as much, if not more, in 1909 and possibly in 1904 than either 1914 or 1915 during the crop growing season. I have already excepted the fall of 1915 and stated that it was an exceptionally heavy rainfall.

Q. But you do not choose to ascribe the presence of water on your land as in any way due to excessive rainfall in those three years, Mr. Pinkney?

A. Not to excessive rainfall alone.

Q. You ascribe it then as in part due to the excessive rainfall?

A. Undoubtedly it caused some more water.

Redirect examination.

By Mr. Bronson:

2111 Q. Mr. Pinkney, in connection with the lands that you have described as flooded I wish you would state for the information of the court the nature and character and description of the buildings there used and occupied by you in farming these lands you have described, in addition to the buildings you described in your direct examination in St. Paul, Minnesota, as being situated on Section 28?

A. These buildings that I now am about to describe are on the north half of the northwest of 28.

Q. And are occupied by you?

A. And are occupiel by me.

Q. Describe them.

A. They consist of a barn, 40x50, 16 foot posts and all cement floor through the entire barn; a hog house, cattle shed, 16x32, eight-room dwelling house with basement under it, granary 14x28 and hen house 12x30, coal house and other small out buildings and another small colt stable 14x20. Most of these buildings have been erected new since I bought the place.

Q. Can you roughly state the value of such improvements?

A. In addition to those improvements I have made fences to the value of some $200.

Q. Can you roughly state the value of these improvements, these buildings?

A. These buildings would be worth close to $4,000.

Q. All told?

A. Yes, sir.

Q. Can you roughly state the value of those buildings that are on the other part of Section 28?

2112 A. I should say about $7,000.

Recross-examination.

By Mr. Palmer:

Q. What have those buildings got to do with this case, Mr. Pinkney?

Mr. Bronson: That is objected to as argumentative to the witness and an improper question to the witness, and it is self evident that the buildings have something to do with the case as showing the nature and character of the tillage and the operation of the farming lands and to show that this gentleman who has $11,000 in improvements is not working in a marsh and is not farming in a marsh, if counsel desires to know.

Mr. Palmer:

Q. Maybe, he can tell us now?
A. I should say that their relation to the case would indicate thoroughly, as the counsel has stated, that I am not operating a swamp.
Q. Were any part of these buildings injured or impaired in value by the overflow from the Bois de Sioux river?
A. I think I have already stated that they were not.
Q. But you proceed upon the assumption that the value of the buildings is less if they are on a small tract, of land than if they are on a large tract of land?
A. Yes, certainly so.
Q. So that a fine set of buildings on a section of land is worth more than a fine set of buildings on a quarter section of land, that is your opinion.

Mr. Pinkney: If the court please, we object, to the form of the question and further object because it assumes a fact which is
2113 not in evidence by the testimony of this witness.

A. The distinction that I mentioned I don't think applies to a quarter section. When I speak of a small tract of land I have in mind what counsel had previously asked me about a narrow strip remaining where my buildings are about 25 or 30 acres across a corner. A fine set of buildings on a quarter section might be worth as much as a fine set of buildings on a section but a fine set of buildings on a little strip of 25 acres certainly wouldn't be worth as much as on a quarter section or half section.

Mr. Palmer:

Q. That is all you got left a little strip of 25 acres, the rest is gone?
A. Less than that.
Q. The rest is gone?
A. Its farming value is gone.

Mr. Bronson:

Q. Under present conditions, you mean?
A. Yes, sir.

2114 JOHN H. BOLTON, being recalled in behalf of complainant, testified as follows.

Examined by Mr. Pinkney:

Q. Mr. Bolton, you are the same gentleman who was called in St. Paul at a previous hearing of this case, are you?
A. Yes, sir.
Q. Will you give us the description of the tract of land you own in Fairmount township?
A. It is the northwest quarter of the northeast quarter and the

northeast quarter of the southwest quarter and lots 2 and 3 section 22, township 130, range 147.

Q. Comprising in all, how many acres?

A. About 150 acres.

Q. When did you acquire those lands you have described?

A. I believe in 1911.

Q. Are you still the owner of them?

A. Yes, sir.

Q. How long have you lived at Fairmount?

A. I am quite sure I came here in 1886.

Q. In the year 1886?

A. 1886.

Q. And have you lived at the village of Fairmount ever since that time?

A. Yes, sir.

Q. Are you acquainted in a general way with the lands in the area on Complainant's Exhibit 1 which are shaded yellow?

2115 A. I am in North Dakota.

Q. How long have you been acquainted with such lands?

A. Ever since I have been here.

Q. Have you been over them off and on at different times and different places since you came here in the year 1886?

A. I have.

Q. For what purpose?

A. Well, I have hunted nearly every year that I have lived here.

Q. Hunted what kind of game, Mr. Bolton?

A. Ducks and prairie chickens and been over *the* more or less every fall, nearly every fall, every fall when there was any water there at all for ducks.

Q. Any water where?

A. Well, along the river anywhere.

Q. Along the Bois de Sioux river?

A. Yes, sir.

Q. And for chickens, would you hunt for chickens over the farm lands, wheat lands?

A. Over the farms along the river anywhere over the country.

Q. Any of the lands?

A. Any of the lands.

Q. Mr. Bolton is your tract of land that you have described, was it included in these overflowed lands in the years 1915, 1916 and 1917?

A. Yes, sir.

Q. What proportion of this tract was covered by those flood waters in the year 1915?

A. All of it.

Q. Have you any improvements on your land?

A. Yes, I have.

2116 Q. A residence house?

A. House and barn and small shed.

Q. Did the waters come up around your buildings?

A. They did.

Q. About how deep was it, do you know?
A. Well, the deepest period I would judge about 3 foot 3½.
Q. About how deep did it come up around your residence?
A. About 3 foot and a half, it was up over the floor in the house 6 or 8 inches at one time.
Q. Over the first floor?
A. Over the first floor.
Q. Fill your cellar?
A. I had no cellar.
Q. Did these flood waters also come up over your lands in the year 1916 and also in 1917?
A. Yes, sir.
Q. To what extent in 1916?
A. Well, to fully as high; I believe a little higher in 1916 than it was in 1915.
Q. How with reference to the year 1917?
A. 1917 it came up over a part of the land for a short period.
Q. About what part of the land was covered with water in 1917?
A. Oh, I would say one-fourth to one third.
Q. Then it would be practically 50 acres?
A. Anyway that much.
Q. Anyway 50 acres covered in 1917?
2117 A. In 1917, yes, sir.
Q. You may tell the court whether or not your harvested any crop upon these lands in the year 1915?
A. No, I did not.
Q. Did you have the lands in crop?
A. I did.
Q. Are you able to tell the court what the crops were in 1915? Give the kind and acreage of each.
A. It was all into wheat.
Q. 150 acres?
A. 150 acres.
Q. What became of the wheat crop that was on your land in that year?
A. About harvest time or shortly before the water came up and spread over the land until it was two to three feet deep all over through the crop and of course in time it all went down.
Q. About how long did the water remain on the land?
A. It remained on there from——
Q. That is the water that stayed on through the fall and froze up in the winter?
A. It came on the worst there the middle of July I would say and stayed on until it froze up and then it receded some.
Q. What was the effect of these waters on this growing crop of wheat that was on this land?
A. It destroyed it all.
Q. What was the condition of the crop of wheat just prior to the time the waters came upon the lands?
A. I considered my crop in the fall of 1915 above the average.

2118 Q. Before the waters came up?

A. Before the waters hit it.

Q. Above the average crop?

A. Above the average crop. The land was really all new and clean and was put in early, about the earliest of any in the community here.

Q. It doesn't appear here yet what the average crop was. Will you tell us what the promise of this *of this* crop of wheat was on your land just prior to the time the waters came up.

A. I have always estimated from 25 to 27 bushels.

Q. Did it have a promise of producing a yield of that extent?

A. It did.

Q. How was the stand and the fill of the grain?

A. They were both very good, above the average.

Q. Now, have you estimated what the value of that wheat crop was as it stood on the land just prior to the time it was destroyed by these flood waters?

A. I estimated what it would have been worth if I could have marketed it.

Q. No, have you estimated what the value of it was as it stood on the ground there at the time the flood waters came upon it?

A. Yes, I think so.

Q. And at the time it was destroyed?

A. Yes, sir.

Q. And have you such estimate with you?

A. I have.

Q. Will you refer to it and tell the court what such crop was worth at that time?

2119 Mr. Palmer: Objected to as not the proper measure of damages.

A. I have made my figures on that crop at what I considered the average yield of wheat per acre in the community that fall, not on what I really think it would be——

Q. What yield did you take?

A. I took 22 bushel- per acre.

Q. Based on that yield per acre, what do you estimate the value of that crop?

A. 150 acres, 22 bushels per acre, would have been 3,300 bushels, at 95¢ per bushel would give me $3,135 gross. I figured the expenses at $6 per acre.

Q. The expense of what, cutting, harvest, threshing and marketing?

A. That is the expense, I figured that wrong, I expect, because that is the expense of plowing, seeding and the whole expense of handling the crop and putting it into the market.

Q. Just deduct the expense of harvesting, threshing and marketing from the value?

A. The other I really lost there, it was paid and I lost the crop.

Q. I just want the expense of cutting, threshing and marketing. Can you give about that expense would be per bushel?

A. We got 9 cents per bushel for the threshing and from that distance it would cost not to exceed 2 cents per bushel to market it but my threshing doesn't cost me quite that because we have our own machine.

Q. Just figure it on what the expense would be to you?

2120 A. I think on my own individual crop there I could harvest and I could thresh and market for about 9 cents a bushel.

Q. Deduct 9 cents a bushel from the gross amount you have given and tell the court——

A. Then there would be the harvesting on top of that besides.

Q. How much would that be?

A. That amounts to $1.25 per acre from that.

Q. Deduct $1.25 per acre from the 150 acres plus your 9 cents a bushel?

A. $484.50 that would come out of this $3,135, leaving $2,650.50.

Q. $2,650.50?

A. For the crop.

Q. What was the net value of the crop to you as it stood on the ground at the time it was destroyed by those flood waters?

A. Yes, sir. I also have in here a damage to the house, $75.

Q. You also suffered a damage to your house?

A. I did. It almost destroyed the floor and the plastering around the bottom and the paper all came loose and I considered it would take at least $75 to put the house back in the condition it was in the first place.

Q. Have you had those repairs made?

A. Yes, sir some. The floor has been remodeled some but it has not been——

Q. You think that $75 was a fair estimate to repair the damage done by the waters to your house?

2121 A. I believe it would put it back so they can live in it.

Q. You think it would cost that to put it back?

A. Yes, sir.

Q. I had about 125 to 140 trees, I considered a loss of $50. They had only been out a couple of years but the cost of the trees and the labor of taking care of them, I considered $50.

Q. Did the water kill those trees?

A. Yes, sir.

Q. All of them?

A. All of them.

Q. What kind of trees were they, fruit trees or shade trees?

A. They were shade trees, they were box elder and Norway poplar.

Q. Now, Mr. Bolton, what crops, if any, did you produce on this tract of land in the year 1916?

A. I would have sowed it to wheat again, the whole thing.

Q. What did you in fact produce on it?

A. Not anything.

Q. Not anything at all?

A. Yes, sir.

Q. You didn't put it to anything because it was covered with these flood waters?

A. It was covered with waters, yes, sir.

Q. You may tell the court what the rental value of land is in this community, on what terms lands are rented?

A. You mean cash or crop terms?

2122 Q. No, crop rents if that is the customary method of renting, is it, crop rent?

A. My place?

Q. Yes.

A. You mean as to the way I have handled my farm?

Q. No, the customary method of renting land.

A. I am not prepared to testify on that because I never rented, I always hire my farm put in.

Q. What was the damage to your land by those flood waters in the year 1916 in your loss of the crops there for that year?

Mr. Palmer: That is objected to as not the proper measure of damages.

Mr. Pinkney:

Q. Based upon the method by which you generally put in and cultivate your crops?

A. My figures for 1916 are on a basis of 7 bushels per acre of wheat. That was about the average crop around here in 1916.

Q. Seven bushels per acre on 150 acres?

A. Yes, sir, that would be, 1,050 bushels, at $1.35 per bushel, would be $1,417.50. Expense would have been $6 per acre would be $900 deducted leaving me a profit of $517.50 for 1916.

Q. That is for your crop?

A. For the wheat crop based on an average yield in this community.

Q. And the average price of wheat during the marketing season?

A. Price of wheat when we were threshing.

Q. Is that the time you generally sell?

A. As a rule it was $1.35.

2123 Q. If you have estimated your damages for 1917, give us the year 1917?

A. In 1917 I got in and harvested 60 acres of flax. They yielded me 5 bushels per acre at $3 per bushel which gave me $900. Expense of that was $390, which gave me a profit of $510.

Q. That is the net profit on the flax crop?

A. On 60 acres of the flax, the other 90 acres was a total loss.

Q. What crop did you intend to put in on the other 90 acres?

A. I think under ordinary conditions I would have had wheat on the 90 acres.

Q. Have you figured the loss on the wheat crop for 1917 on that 90 acres?

Mr. Palmer: We object to that as not the proper measure of damages and it may be so understood.

A. I have figured 90 acres at 10 bushels per acre, which was about the average in this community, would be 900 bushels. $2.05 per bushel, $1,845. Expense of handling at $6.50 per acre would be $585, leaving me a profit of $1,260.

Mr. Pinkney:

Q. Have you in each instance in these final estimate- given all the expense you would have been put to in harvesting, threshing and putting your crop in the market?

A. Yes, sir.

Q. Will you give the total of your damages for three years?

A. I make it $4,553.

Q. Assuming, Mr. Bolton, that the usual method of renting lands here is one-half of the cereal crops every year, the landlord
2124 to furnish the seed, wheat and other seed, the tenant to deliver the grain in the market and furnish all labor, what would be the rental value of these lands that were flooded in the years 1916 and 1917.

A. On a half crop basis you mean?

Q. Yes, sir.

A. Well, the same figures would apply that I have given outside of the——

Q. You would divide the wheat and the other grain——

A. Equally, the owner is out the price of the seed and half of the threshing.

Q. In other words, would simply be required to divide these wheat figures on equal terms with the tenant?

A. Yes, sir, but the expense would figure out a little different.

Q. Can you figure out what would be the rental value of these lands to you for the years 1916 and 1917 on a rental basis, assuming the rental terms to be as I have stated?

A. You want each year separately?

Q. Yes, 1916 and 1917 will have to be separate, because 1916 you produced no crop and 1917 you did produce some.

A. Do you want all three years?

Q. No, not for three years. 1916 and 1917, take 1916 to start with.

Mr. Bronson: Aren't you familiar with the crop plan of renting in this vicinity?

A. Yes, sir.

Q. And haven't you threshed for tenants and landlords
2125 for years around here?

A. Yes, sir.

Q. And so in a general way although you haven't yourself rented land on the crop division basis, you are familiar with the method of renting in this community upon what is termed the cropper's contract or agreement?

A. Yes, sir.

Q. Whereby the landlord agrees with the tenant, generally speak-

ing, to furnish the seed and the tenant to furnish the labor and the landlord to pay half the twine bill and tenant to pay half of the twine bill and the landlord and tenant to also divide the threshing machine bill?

A. Yes, sir.

Q. You are familiar with that?

A. Yes, sir.

Q. Without any assumption can you figure out the rental value of these premises as you have described them for the year 1916?

A. The rental value to myself?

Q. Yes to yourself; go ahead and do it?

A. My share for the year 1916 will amount to $424.75 net.

Q. What deductions have you made?

A. I have made deductions for the price of the seed and threshing and one-half share of the twine.

Q. Now give us 1917.

A. That is a little complicated because some of it would be flax and some of it wheat.

Q. Take the wheat crop; you can't include the flax.

(Recess is taken until 1:15 P. M.)

2126 Hearing resumed, pursuant to adjournment, at 1:15 p. m. all parties being present.

Direct examination of Mr. J. H. Bolton, resumed.

By Mr. Pinkney:

Q. Have you computed and will you now state the rental value of your lands that were flooded there for the year 1917?

A. I figure for the year 1917 on my share on a rental basis would net me $673.

Q. That you regard as your damages occasioned by these flood waters in that year on the rental value of the lands?

A. Yes, sir.

Q. Now did you compute it for the year 1915 also?

A. I did.

Q. Will you please state the rental value for the year 1915?

A. $1,236.50.

Q. Now will you state, Mr. Bolton, what the total amount of your losses and damage would be as figured by you on a crop plan basis for the years 1915, 1916 and 1917, on these overflowed lands that you owned?

A. The total amount would be $2,334.25.

Q. In arriving at those figures have you taken into consideration all items of expense and so forth that it would have been necessary to incur to market the crops?

A. Yes, sir, I have.

Q. Mr. Bolton, I wish you would tell the Court what you regard was the fair market value of your lands down there which you

have described in your testimony in this case in the year
2127 1914, prior to the time of the appearance of these flood waters?

A. I considered it worth $75 to $80 an acre.

Q. What would you say as to its market value since these flood waters appeared in 1915, in the future?

A. I don't believe there is any market value at all now?

Q. You think there is no market value for them?

A. I don't think there is.

Q. Under the present conditions?

A. Yes, sir.

Q. I understand from a question propounded by Mr. Bronson in your present examination that you had been engaged in the threshing business for some years in this locality?

A. I have.

Q. Did that line of occupation, threshing, extend through these lands known as these flooded lands?

A. To some extent, yes.

Q. To what extent of the threshing you have done? That is to say, what proportion of the threshing you have done was on crops grown on these flooded lands?

A. Well, a very small part, because I have only been threshing four years and the last three years they have been flooded.

Q. Then you threshed one year on these lands before the floods came?

A. Yes, sir.

Q. The year 1914?

A. The fall of 1914 we threshed some on some of these
2128 lands that were flooded and the fall of 1915 we threshed some.

Q. On the lands that were not flooded?

A. Yes, we threshed out on these farms that part of them the crop was taken off, and we threshed that portion of the crop that was not flooded.

Q. Was anybody engaged with you in your threshing operations?

A. Yes, sir, Mr. Kurtz.

Q. Burt Kurtz?

A. Yes, sir.

Q. Can you tell the court without reference to your—did you keep records of your threshing returns?

A. We have them for 1915, but I don't believe we have them for 1916.

Q. Have you records with you?

A. I have for 1915.

Q. Will you produce the record and tell the court what the crop returns were from these lands included within this flooded area on which you threshed grain the season of 1915?

A. I can't give you the acreage. I can give you the amount of bushels.

Q. Well, the amount of bushels and the man's name.

Mr. Palmer: I object to this as entirely irrelevant and immaterial, not tending to establish any measure or element of damages whatever.

Mr. Pinkney: This is not offered particularly for the purpose of establishing damages, but it is offered for the express purpose of contradicting the attitude of the state of Minnesota that these
2129 were principally marsh and overflowed lands, as witnesses for the state of Minnesota have testified, and it is usable also for the purpose of laying a foundation for damages in the years 1916 and 1917, as well as 1915.

Q. Now, referring to your memorandum, Mr. Bolton?

A. The first man we threshed for was this man Burt Kurtz. He had a very small portion of his drow-ed out that year, I think. I don't know the description of his land.

Q. Was that in the southeast quarter of 32?

A. That is the northwest quarter in that section where he lives.

Mr. Palmer: Objected to as Mr. Kurtz has expressly testified that he has no claim here for damages.

Q. That would be the northwest of 33?

A. Yes, sir, I would say so.

Q. What was the threshing returns there?

A. 2,048 bushels of wheat, 310 bushel- of oats and 1,187 bushels of barley and 1,124 bushels of succotash. I mean by that a mixture of wheat and oats sowed together.

The next is John Hurdelbrink, right north of Kurtz in the next section, the south half of 28. He had 1,586 bushels of barley, 4,077 bushels of succotash, wheat and oats mixed.

The next was Branson on the southeast of 31 and the southwest of 32—2,664 bushels of wheat, 2,667 bushels of oats, 968 bushels of barley.

The next was a man by the name of Leff who was on this H. B. Taylor farm.

Q. What was the land occupied by Mr. Taylor that year?

A. The east one-half of the west one-half and the west
2130 one-half of the east one-half of section 5. Leff was the renter on the place. He had 2,693 bushels of wheat, 1,620 bushels of oats and 625 bushel- of barley.

The next is Kuglan Brothers. They were also rentors on the north one-half of the southeast quarter of 32 and the northwest quarter of 32. They had 1,847 bushel- of wheat, 1,135 bushel- of oats, and on that northwest quarter was 1,016 bushel- of wheat. W. J. Lower, the northeast of 31, 505 bushel- of wheat, 1,300 bushel- of oats, 525 bushel- of barley.

These were all in Fairmount township. We did some threshing later on for this man Gaer, but I haven't got the returns. These were in another book and I couldn't locate it.

Q. These lands which you have described on which this threshing was done are all located in Fairmount township?

A. Yes, sir.

Q. Richland County, North Dakota?
A. Yes, sir.
Q. Mr. Bolton, I now hand you a photograph marked Complainant's Exhibit 28 and I will ask you to state if you know what place that represents?
A. That is a picture of the residence on my farm.
Q. This 150 acres you have testified to?
A. Yes, sir.
Q. When was that taken?
A. I couldn't say the exact date, but in the fall of 1917. It was about six weeks ago I would judge.
Q. Does it truly and correctly represent the condition of affairs which it purports to represent?
A. I would say that was a good representation of it, yes.
Q. What are those large plant growths appearing here?
2131 A. What we call cat-tails.
Q. Those are the ones shown in the foreground of the picture?
A. Yes, sir.
Q. How extensive is that growth of cat-tails on that piece of land of yours in 1917?
A. It varied. I would say that the cat-tails covered about two thirds of the farm.
Q. About two thirds of the 150 acres?
A. Yes, sir. The rest of the farm where the water stood so long was perfectly bare.
Q. On the rest of the 150 acres the ground was perfectly bare?
A. Yes, sir.
Q. Is the bare ground shown on this picture? If so, at what part does it appear?
A. No, it dosen't show there.
Q. I now show you complainant's exhibit 29, and ask you to state what that represents?
A. This is a picture taken on my farm at the same time the other was. It shows a few of these cat-tails as they stood on the farm there.
Q. At the time the photograph was taken?
A. Yes, sir.
Q. It is a true and correct representation of the conditions there at that time?
A. I would say it was, yes.

Mr. Pinkney: We offer complainant's Exhibits 28 and 29 in evidence in connection with the testimony of this witness.

2132 Q. Mr. Bolton, did these flood waters of 1915 1916 and 1917 have any effect upon the arability or workability of the land at the present time or did it have any effect on them?
A. Yes, sir, it did.
Q. In what way?
A. Well, it was grown up with these cat-tails and also with grass

until it is soddy and it — almost impossible, was almost impossible until this fall to get anyone to plow it for you.

Q. Is the expense of plowing it more or otherwise than lands not affected by the flood waters?

A. It is more.

Q. What is the difference in the expense of plowing per acre?

A. I would say about a dollar an acre more.

Q. Now, what in your opinion would the expense per acre be of restoring these lands to their former condition of cultivation and productiveness?

A. I would say at least $5 per acre and about two years time before it would be rotted down—the sod—and in the condition it was before.

Q. It would be then according to your judgment, a damage of $750 on your 150 acres, at $5.00 per acre?

A. I would think about that.

Cross-examination.

By Mr. Palmer:

Q. You have stated these several estimates of your damage with the expectation and understanding that you are to recover these sums of money by appropriation from the state of North Da-
2133 kota in case the State of North Dakota recovers damages in this case against the State of Minnesota?

A. I expect to recover damages. As to just how much I couldn't say.

Q. But if the damages you have mentioned here are all recovered by North Dakota from the State of Minnesota you expect the State of North Dakota to appropriate that sum of money to you?

A. Yes, sir.

Q. And for that purpose and with that understanding and expectation you have contributed to the expense of carrying on this litigation on the part of the state of North Dakota?

A. We have contributed—I have contributed for the purpose of recovering damages if possible, and also to get some relief from these flood conditions, if possible.

Q. In other words you expect to get damages and relief as a private citizen from the State of Minnesota through the medium of the State of North Dakota?

A. I do.

Q. And with that expectation and upon that understanding you have contributed to the expense of maintainance of this suit?

A. I wouldn't say as to that understanding. We have contributed to the suit trying to get some relief. There has been no understanding only that they would try and get us relief here from these flood conditions if possible.

Q. Who?

A. Our attorneys and the State of North Dakota.

Q. The attorneys appearing for the Complainant here, outside of

the Attorney General's office of North Dakota, represent the
2134 private interests involved in this suit according to your understanding?

Mr. Bronson: Objected to as calling for a conclusion of the witness.

A. I couldn't say as to that.
Q. Do you know anything about what you contributed these funds for?
A. I believe I have stated what we contributed the funds for.
Q. Was it for the purpose of employing counsel?
A. I wouldn't say as to that. It was for the purpose of getting relief from the conditions as I have stated.
Q. That included the employment of counsel?
A. I would say it did, yes.
Q. This land of yours lies within a mile and a half of the village of Fairmount?
A. Yes, sir.
Q. It is very plainly visible from the village?
A. Yes, sir.
Q. It appears to have been patented from the Government about the year 1884. Is that your best information of it?
A. I don't know as to that.
Q. You purchased it you say in the year 1910?
A. 1910 or 1911, 1911, I think.
Q. If it was first filed upon somewhere from '81 to '84 as has been testified all of these lands were, it had lain there for somethings like thirty years before you bought it?
A. You mean after it was filed on.
2135 Q. Yes.
A. I suppose it had, yes.
Q. During that time there never had been a foot of it broken up?
A. Not to my knowledge, no.
Q. In all that time there hadn't been a single building of any character erected upon it?
A. I don't think so.
Q. In all that time there had been no use made of it other than to cut portions of it for hay?
A. What do you mean by portions?
Q. Answer the question, qualify it, if necessary.
A. I had all been cut for hay so far as I know.
Q. What was the full rental value of that land in the year 1910? The year previous to your purchase of it?
A. I don't know.
Q. Did it have any?
A. I don't know.
Q. What was its rental value in the year 1908?
A. I don't know.
Q. Did it have any?
A. I suppose it did.

Q. Do you know of the owner of that land prior to your acquisition of it ever receiving one dollar income from it?

A. I suppose he did. It was handled through the land company and they rented it to different people for hay, and I suppose the owner received the money for it.

Q. What was the character of this hay?

A. It was fine upland hay.

Q. It was upland hay?

2136 A. Yes, sir.

Q. That land, ever- foot of it with the exception of 25 acres in the northeast portion of the northeast quarter of the southwest quarter of 22 is platted upon the government plat as marsh and swamp land, is it not?

A. I don't know, I never saw the plat.

Q. I will call your attention to defendant's exhibit 107, being the government plat and will ask you to look at it and tell me if that statement is true?

Mr. Bronson: Objected to upon the ground it doesn't appear in the evidence that this is a government plat, and asking the witness to identify something that was not in his possession and concerning which he has no knowledge.

A. According to the map itself.

Q. Did you ever see any of this hay that came from it?

A. Yes, sir.

Q. Where?

A. Saw it in the stack down there, stacked up.

Q. Ever put up any hay there?

A. No, sir.

Q. Ever feed any of it?

A. No, sir.

Q. Handle any of it in any way?

A. Yes, sir.

Q. What for?

A. In the spring I broke that up there was parts of hay stacks still lying on there and I burned them up to get them out of the way to break.

Q. You burned up this fine upland hay to get it out of the way?

2137 A. Burned up the old stack bottoms.

Q. That fine upland hay?

A. Yes, sir.

Q. That was in 1911?

A. The spring of 1911, I think.

Q. 1911, was a very dry year, was it not?

A. I couldn't say as to that.

Q. That the year you broke this land up?

A. Yes, sir.

Q. Was it dry then?

A. Yes, sir.

Q. The year 1912—that was a dry year, was it not?

A. I don't know.
Q. Did you put this land in crop that year?
A. Yes, sir.
Q. All of it?
A. Yes, sir.
Q. 1913?
A. Yes, sir.
Q. All of it?
A. Yes, sir.
Q. 1914?
A. Yes, sir.
Q. You put all of it in crop?
A. Yes, sir.
Q. Any water on there at all?
A. No, sir.
Q. No trouble with the water in 1914?
A. No, sir.

2138 Q. Now this, as I understand you, was at the time you purchased it, good, tillable farming land, as good as any other land in the vicinity?

A. Yes, sir.
Q. What was the fair market value of good tillable, farming lands within a mile and a half of Fairmount in the year 1911?
A. I couldn't say as to that. I am not an authority on that, I don't know.
Q. Mr. Pinkney, testifies that he paid something like $93.50 an acre for land a little nearer to Fairmount with poor buildings upon it. Would you say that $50 an acre was a fair market value for good farming land without buildings, within and a half — of Fairmount in 1911?
A. I don't know.
Q. There is nothing on which you can base any opinion than as to what the market value was of good farming land within a mile and a half of Fairmount in 1912?
A. No, I couldn't make any statement whatever as to that.
Q. You don't know whether that was worth five dollars an acre or $75?
A. Well, I know it would not be worth as low as $5 an acre. That is not reasonable.
Q. What do you think would be reasonable?
A. Well, I claim I am not an authority on land values, and I don't care to make any statement as to what it was worth.
Q. You made, with a good deal alacrity, the statement that this land had no market value at the present time?

A. Yes, sir.

2139 Q. Have you any knowledge whatever of farm values?

A. Some, yes.

Q. You had sufficient to make that statement?
A. Yes, sir.
Q. Where did you get sufficient information to make that statement?

A. Well, since I have bought the land I have taken a little more interest in farming and am in a little better position to state as to value. Up to 1911, I had no land and paid no attention to it whatever.

Q. So then you bought this land in 1911, without any knowledge or information as to whether you were paying what it was worth or ten times what it was worth?

A. No, I wouldn't say that.

Q. Did you at the time you purchased this land have any information or knowledge whatever as to the fair market value of such lands?

A. I think I did.

Q. Is there any reason then why you can't express such knowledge at this time?

A. There is, because I don't really remember.

Q. You did inform yourself at the time you bought this land?

A. I believe I did.

Q. But your information you have forgotten—it has gone from your land?

A. Yes, sir.

Q. You bought this land for $17.50 an acre did you not?

A. Yes, sir.

2140 Q. You paid then $2,625 for the entire tract?

A. Something like that.

Q. How much money did you make on this land in 1911?

A. I had a total of nearly $4,000 off of there in 1911.

Q. How much did you make net?

A. I would say around $3,000 net.

Q. So the first year that you farmed it you made about $400 more than you paid for the entire tract?

A. Yes, sir.

Q. How much did you make in 1912?

A. If I remember right, somewhere about $2,600. Taken off of there in 1912, in wheat and barley.

Q. And that is net, is it?

A. No, that was gross. I rented it that year and made a net profit there of about an even $900 for my share.

Q. 1912, has been testified to here as the banner crop year. Your returns from this land fell from $3,000 in 1911 to $900 in 1912?

A. Yes, sir.

Q. Why was that?

A. In 1911, it was put into flax. Flax was worth $2.65 a bushel, and the following year it was put into wheat and barley.

Q. And you don't recall thought as to 1911, being a particularly dry year, you say?

A. No, I don't. There was plenty of rain to mature the crop. I know that.

Q. Of flax?

A. Yes, sir.

2141 Q. 1913, how much money did you make off this land, net returns?

A. I couldn't say as to 1913. I have really forgotten. I remember the first two years distinctly. But as to 1913, now I couldn't tell you the exact amount, but I had a good fair, average crop, if not above the average.

Q. What kind of grain?

A. I think it was all wheat.

Q. Do you think that you made as much as $2000 off the land that year?

A. No, I don't think I did.

Q. What is your best recollection?

A. Well, now I couldn't make any statement because I don't remember, and I couldn't say within two or three hundred dollars either way.

Q. Well, make a statement within two or three hundred dollars?

A. I don't remember the price of wheat in 1913, and it is awful hard to make any statement as to what I received.

Q. Did you make as much as a thousand dollars?

A. I would think some where around there.

Q. Did you rent the land that year?

A. No, I hired it put in.

Q. How much did you make in 1914, off that land?

A. If I remember right we had rust in 1914, and I can't make any statement as to what I made that year.

Q. Do you recollect that you made anything in 1914?

A. I don't recollect as to what I made. I don't know as I made a great deal. I know I played even, but, as to how much I
2142 made, I couldn't say. The crop was very light.

Q. You played about even that year?

A. Yes, somewhere there. There might have been some profit, but I don't know how much. Not a great deal.

Q. And now you want for 1915 $2,650.50?

A. Yes, sir.

Q. You assumed you would have no rust in 1915?

A. The crop was ready to cut within ten days after the flood hit it.

Q. Well, I say you assumed you would have no rust and that you would have received the highest market price for your crop, and that you would have made that year almost as much as you made in 1911 from the crop of flax?

A. Oh, no, not as much. I set my price on the crop of wheat when we threshed, not the highest market price. The high price when we threshed was $1.35. I took the average crop in the community, and my crop I considered was above the average.

Q. Now take the average crop in the community in 1914, and compare it with your crop on this land and tell me how it compared?

A. Why, I would say about the same.

Q. You think that the rest of the farmers in this locality played about even in 1914 and made no profit?

A. I couldn't say as to that. Some of them depend on other things besides wheat. Oats I believe was a fair crop, and I think corn was alright. But wheat in itself was a poor crop, and I had all wheat on mine.

Q. Wheat was a poor crop?

A. The rust hit it. Yes, it was a poor crop.

2143 Q. The wheat was an extremely poor crop in 1916, wasn't it?

A. It was below the average, yes.

Q. Almost no crop at all?

A. There was some crop.

Q. Very little? And of poor quality, wasn't it?

A. The quality wasn't first grade, no, not much of it.

Q. You heard the testimony of Mr. Pinkney here, I think, something like three bushel to the acre?

A. We threshed in 1916 and the wheat ran from three to as high as eight bushel per acre.

Q. So you estimate you would have raised seven if you had had the use of this land next to the river?

A. I do.

Q. In 1916 how much wheat did you thresh on land that lay adjacent to this Bois des Sioux river?

A. I don't remember.

Q. Did you thresh any whatever?

A. You mean adjacent to the flooded district or this flooded territory.

Q. I mean land like yours?

A. We didn't thresh any more there; we had no submarine.

Q. There was no wheat raised about Fairmount at all?

A. Not in that flooded area.

Q. Was there any raised along the land adjacent to the Bois des Sioux river?

A. Yes, sir.

Q. What did that go per acre?

2144 A. As I say from three to eight or nine bushel per acre.

Q. You threshed some, did you?

A. Yes, sir.

Q. For whom?

A. I couldn't recall now. I paid no attention.

Q. I kept no trace of the bushels; we threshed by the hour that fall. But I remember in a general way in threshing it would vary, some small and some larger. Just who had it I couldn't say.

Q. Wouldn't it be about as fair to estimate that you would get three bushel to the acre as it would that you get seven?

A. I wouldn't say as to that.

Q. Why do you estimate that you would have received seven bushel to the acre on this land?

A. Why the land is new and clean and in good condition to produce a crop.

Q. It was that way in 1914 wasn't it?

A. Yes, sir.

Q. And yet it didn't produce a crop that paid you any profit that you can recall that year, did it?

A. No, sir.

Q. How much do you assume that you would have received from this land in 1917?

A. I think I gave the figures there once.

Q. How many bushel to the acre?

A. I think I put that in as ten bushel.

Q. Why did you assume that you would have had more wheat on that land in 1917 than you had in 1914?

2145 A. Because there was no rust this year.

Q. No rust where?

A. On the wheat.

Q. On other lands?

A. Yes, sir.

Q. How much did these buildings cost you?

A. I don't remember exactly what they cost.

Q. Approximately?

A. Probably fifteen to eighteen hundred dollars.

Q. You paid $2,625 for the land and we will say $1,800 for the buildings—that would be about ten dollars an acre or something over—about $12 an acre. Now you purchased the land in 1911 paying therefor $2,625, or $17.50 an acre. You put on buildings we will say costing $12 an acre, which would bring the land up to within the neighborhood of $30 an acre?

A. Yes, sir.

Q. And you think that in the three years from 1911 to 1914 that land went up from $30 an acre to $75 an acre?

A. Yes, sir.

Q. Or with the addition of the buildings it was about five times the value of what it was when you bought it in 1911?

A. I think it was worth that much more than I paid for it.

Q. Do you know of any other farms that increased in value five fold in those three years?

A. I don't know of any other farms that you could have bought for that money in 1911.

Q. I thought you said you didn't know anything about farm values in 1911?

2146 A. I didn't, but I say I don't know of any farm you could have bought for that money.

Q. What price do you think they could have been bought for?

A. I couldn't say.

Q. How do you know they couldn't have been bought for Ten?

A. It was my idea that — couldn't. Now I might be wrong, but I say I don't know of any. I am not posing as an authority.

Q. Well, it was some raise, a five-fold increase in three years?

A. Yes, sir.

Q. And then it was some drop from $75 an acre in 1914 down to absolutely nothing in 1917?

A. Yes, sir, pretty heavy drop, all right.

Q. Considerable of a drop?

A. Yes, sir.

Q. And everybody knew about that drop, such a remarkable

drop as that, would they not? That is, people generally in this locality would know of such a tremendous drop in value?

A. Oh, yes.

Q. And among other people, I presume the assessor would take note of that extraordinary fall in value?

A. I don't know anything about the assessor.

Q. Well, does he live in this vicinity?

A. Yes, sir.

Q. Is he a man of average intelligence?

A. Yes, sir.

2147 Q. And fairly well informed?

A. Yes, sir.

Q. He is this very partner of yours?

A. Yes, sir.

Q. Mr. Kurtz?

A. Yes, sir.

Q. In 1914 he placed an assessed valuation upon that land of $1,115, and in 1917 an assessed valuation of $1,216, it appears. Did you speak to him about that?

Mr. Bronson: Objected to as improper cross-examination.

A. No, sir.

Q. Never talked that matter over with him?

A. No, sir.

Q. But your opinion is that it had a value of $75 an acre in 1914 and absolutely nothing in 1917?

A. It has no market value at the present time.

Q. Isn't it all plowed up at the present time?

A. No, sir, it is not.

Q. Isn't the greater part of it plowed up?

A. Yes, sir.

Q. What is it plowed up for if it has no value?

Mr. Bronson: Objected to as an improper statement of the witnesses testimony, assuming a state of facts not testified to by the witness.

A. We are going to keep right on trying to raise crops down there. That is what it is plowed up for.

Q. Those buildings are there yet?

A. Yes, sir.

Q. Have you placed that land upon the market?

A. No, sir.

Q. Have you made any effort to sell it? Or dispose of it?

2148 A. Not outside of putting a mortgage on it.

Q. When did you put that mortgage on there?

A. Spring of 1915.

Q. What time in 1915?

A. I think in May.

Q. How much did you put on it?

A. $3,800.

Q. How did you happen to put $3,800 mortgage on the land that had no market value?

A. It had a market value in 1915. I never claimed it didn't.
Q. It had a market value in 1915?
A. I would judge it did or I couldn't have got a loan on it.

Mr. Bronson: Was that before or after the flood?
A. Before.

Q. Which part of 1915 did you say?
A. I said along in May or June.
Q. The mortgage has not been foreclosed?
A. No, sir.
Q. Nor you don't propose to let it beforeclosed?
A. They don't propose to foreclose it under the present conditions I would think.
Q. Are you perfectly willing that they should do so?
A. Yes, sir.
Q. Perfectly willing to let it go on foreclosure?
A. Yes, sir.
Q. And yet you are breaking it up and propose to put a crop on it next year?
2149 A. I propose to pay the mortgage if I can.
Q. Have you offered to surrender it to the mortgage holder?
A. No, sir.
Q. Did you see this land in 1897?
A. Yes, sir.
Q. What part of the year?
A. Why all summer, off and on, during the summer.
Q. Any water on it?
A. Had water on in the spring, yes.
Q. Had water on all summer?
A. In 1897?
Q. Yes.
A. No, sir.
Q. Any crop on it in 1897?
A. No, sir.
Q. Any hay cut on it?
A. I think so.
Q. Did you see it?
A. I don't remember distinctly whether I did or not, but the hay was cut every year. I presume it was cut that year.
Q. If it was cut every year it was cut that year—no question about that?
A. Up until 1915 I think the hay was cut every year.
Q. In what year did you say you came here?
A. I think in 1886.
Q. You don't know anything about this land in 1881 or 1882?
2150 A. No, sir.
Q. Ever hear anything about it?
A. Not to my knowledge. I might have in a general way, but nothing that made any impression on me.

Q. Now you think you ought to have from the state of Minnesota $5,303, about twice what you paid for this land Mr. Bolton, do you?
A. I think those are the figures—something like that.
Q. And then have the land too?
A. Yes, sir.

Redirect examination.

By Mr. Bronson:

Q. Counsel has asked you upon cross-examination several questions concerning your understanding in connection with the prosecution of this case, and I will ask you to state whether or not you have had any understanding whatsoever with the State of North Dakota or the attorney general concerning it?
A. No, sir, there wasn't.
Q. And I will ask you to state, whether or not, as far as you are concerned, as a citizen of the state of North Dakota, and as far as I understand you are, you are simply expecting the State of North Dakota to protect your rights both as an individual and your property rights as a citizen of the State of North Dakota and not otherwise?
A. Yes, sir.
Q. Now I will ask you to state also whether or not such contributions as you have made in this connection have all been
2151 with the general thought on your part that they were usable for proper purposes in an action by the State of North Dakota against the State of Minnesota to protect the citizens of North Dakota against what might be claimed unlawful acts of the State of Minnesota.
A. Yes, sir.
Q. Although you have testified, generally speaking, at St. Paul concerning the general conditions of this land along with some other land for the years you have known it up to the year 1915, I will ask you again to state in the record whether or not during any of the time that you have been a resident of this community you have ever observed a time in all of the years you have lived here when this land this overflowed lands,—when I speak of these lands I mean these overflowed lands—and particularly the lands you have described here as being damaged—have not been able to and susceptible of cultivation for farm purposes every single year up to the year 1915?
A. You mean by that the whole flooded area?
Q. No, this particular piece of land.
A. That I own?
Q. Yes.
A. Yes, sir, it has to my knowledge.
Q. In one portion of your testimony in response to a question that counsel for Minnesota propounded to you you mentioned that this land was in good condition to produce a good crop in 1916. Now you didn't mean to say that you thought after the flood of the

year 1915 on this land the land at that time in the spring of 1916 was in condition to produce a crop?

A. I thought he compared the year 1914. I understood
2152 him to ask in regard to the year 1914.

Q. Mr. Bolton, the point of the question that I desire to ask you is whether or not in the year 1914 and in the spring of 1915 this land was in good shape to produce cereal crops on?

A. Yes, sir.

Q. And when you have testified here concerning crop damage for the years that you have mentioned and also the rental value for the years you have mentioned you have so testified, have you not, with reference to conditions that might have been if the flood conditions had not occurred?

A. Yes, sir. I think I did.

Q. Mr. Bolton, counsel has asked you several questions concerning the market value of this land, concerning the value of this land and concerning your opinion as to the value of this land, comparing how cheaply you had bought this land in 1911 and the apparent raise in the market price of the land in 1914 and 1915, up to that time, and I will ask you to state first, whether or not when you bought this land in 1911 the price that you have stated of $2,625 that you paid for it was the market value at that time?

A. That was what I paid for it.

Q. And I will ask you to state whether or not you have formed any opinion as to the market value of 1914, or about that time, concerning its being worth as market value about $75 per acre from any effort that you made to acquire some land south of there adjoining you- land?

A. Well, the land in 1914, I improved it. It was all broken up and that was the year I put the buildings on there, and this lot 1, south of me that Mr. Pinkney owned lays between me
2153 and the main road on the south. And I tried to buy this forty acre tract, or thirty-seven acre tract, whatever it is, from Mr. Pinkney so as to let me out on to the road to put my building on, and if I remember distinctly I had a deal made with him for about $67. an acre for that tract and we had the deal about closed and he backed out and wouldn't take it and for that reason—one reason I thought that if that tract of his of forty acres was worth more than that, and it was old land and wasn't in the best of condition and my land being new with the buildings on certainly was worth more than that, and it ought to be worth $75.

Q. Mr. Bolton, do you know of other lands in this vicinity being sold since 1914 or in the year 1914 of their being sold in 1914 or about that time, 1913 or 1914 prior to the time these flood waters came on?

A. I don't know. I haven't really paid much attention to sales.

Q. Do you know about the piece of land right north of the Pinkney land being sold?

A. That tree claim?

Q. Yes, the Anderson farm?

A. That was sold, yes. I don't just remember the year. I think it was about 1914.
Q. Do you know what that sold for?
A. I think the land company sold that at $65.
Q. Wasn't it a- $107?
A. You mean the home place up here?
Q. Yes.
A. I thought you meant this quarter that Mr. Schouweiler testified that he owned. This other quarter that this man Anderson owned, that sold for $105 or $107 per acre in 1914.
2154 Q. That lies right on the north side of the east and west road does it not?
A. Yes, sir.
Q. And right beside the eighty Pinkney now lives on?
A. Right north of where Pinkney lives now, yes. And this Connereau quarter sold, I think, somewhere around $100 an acre somewhere about that time.
Q. Where is that located?
A. Right across from the Kurtz the northeast of 32.

Recross-examination.

By Mr. Palmer:

Q. None of that land *that* was reached at any time by any of the overflow from this river?
A. No, sir.
Q. And never was to your knowledge?
A. Not to my knowledge. This land I spoke of of Mr. Pinkney's was in the overflow area.
Q. The land that you talked with him about buying for $67.50 an acre, that was within this overflow area?
A. Yes, sir.
Q. Do you know of anybody else offering him $67.50 an acre for that land?
A. No, sir, I don't.

Redirect examination.

By Mr. Pinkney:

2155 Q. It is also true, isn't it, that this Anderson farm sold for $107 an acre, that part of it was in the overflow district, the easterly portion of it, or was in 1916 when you had these flood waters?
A. No, I don't believe the water came up there.
Q. Are you sure about that?
A. I am not certain, but I don't think it did.

Witness excused.

NEWELL N. POWELL, having been called as a witness on behalf of the complainant was duly sworn and testified as follows:

Direct examination.

By Mr. Pinkney:

Q. What is you- age, place of residence and occupation?
A. 46, White Rock, South Dakota, Banker.
Q. How long have you lived in White Rock, South Dakota?
A. I have lived in White Rock, South Dakota, twenty years and six months and I lived here at Fairmount close to two years prior to that.
Q. What were the years you resided in Fairmount, North Dakota?
A. From May 1895 to March 1897.
Q. And have continuously resided at White Rock, South Dakota, since that time?
2156 A. Yes, sir.
Q. Are you the owner of any land in Fairmount township, Richland County, North Dakota?
A. Yes, sir, the west half of the south east quarter and the east half of the southwest quarter of section 9, 129, 47.
Q. How long have you owned that land, Mr. Powell?
A. Since about the 1st of December 1913.
Q. Did you buy it from the former owner?
A. Yes, sir.
Q. What condition as to cultivation was it in at the time that you bought it?
A. It was all in hay land.
Q. What kind of hay?
A. Wild hay land.
Q. What you call up-land prairie hay?
A. Up-land prairie hay. A very small portion along the east side that you might call mid-land hay.
Q. But most of it, as I understand you, was up-land prairie hay?
A. Yes, sir.
Q. When you got it what did you do with it in the way of cultivating and farming it?
A. In the spring of 1914 I broke 36 acres and put it to flax, and also sold the rest of the acreage for hay privilege.
Q. How long had you known that land before you bought it?
A. I had not know- the piece, that individual piece at all prior to buying it.
2157 Q. Had you seen it before?
A. Not except at a distance. I hadn't been on it.
Q. Now you broke up thirty-six acres in 1914, and put it to flax?
A. Yes, sir.
Q. Did you produce any crop on it in 1915?
A. None whatever.
Q. Why not?
A. Owing to wet conditions, water conditions.
Q. What water conditions?

A. Well, the overflow of the Bois de Sioux river.

Q. How long did the water stay on—when it came on how long did it remain there in 1915?

A. Commenced to come on to the cultivated portion—I broke fifty acres more in the spring of 1915 and seeded that to flax so that I had eighty-six acres under cultivation in all.

Q. When the flooded water came on?

A. Yes, and when they came on, they commenced coming onto the land about the first of July and by the 20th they were clear across the land.

Q. Did you have the entire 86 acres in crop at that time?

A. The entire 86 acres.

Q. What kind of crop?

A. 36 acres marquis wheat and 50 acres of flax.

Q. How deep did the water get on your land, do you know?

A. Oh, it got at the west side a depth of about eighteen
2158 inches.

Q. And continued up through the season of 1915?

A. Yes, I wasn't on the land during 1916 because I knew it was flooded.

Q. Well it continued on that land during the season of 1915 and froze up there during the winter?

A. Yes, sir.

Q. What effect did that have on these growing crops, this flax and wheat?

A. Drowned them out so I was unable to cut them.

Q. Were they growing at the time the floods came on?

A. Yes, sir.

Q. What condition was the crop in?

A. Some of the best crops I ever raised.

Q. Promise a good crop?

A. Yes, sir.

Q. Both as to flax and wheat?

A. Both of them were very fine crops.

Q. Now as to the remaining portion of this quarter section—74 acres, there was 74 acres still in hay land?

A. Still in unbroken hay land.

Q. What effect did these flood waters have on this hay land?

A. Well, I lost the income from the hay land of course for two years.

Q. What effect did it have on the hay land—did the hay continue to keep on growing or did it kill it?

A. It didn't kill it. The hay this year is good, but full of old growth.

Q. Have you computed the value of this flax and wheat
2159 crop that was growing on your lands in the year 1915, that is the value of the crop as it stood on the land at the time the flood waters came up on it?

A. I have made an approximation of it, basing the amount of other crops that were raised that year.

Q. What was the value of this wheat crop as it stood on the land at the time the flood waters came upon it?

A. $468.50 net.
Q. How many acres?
A. One-half of thirty-six acres. I had one-half of the crop on it.
Q. When you say net, what do you mean by that?
A. I mean that is after deducting the expenses that I would have had if I had cut it for twine and threshing and hauling to market.
Q. That is to say, after deducting the items of expense that would have been necessary to incur to put it on the market that leaves this result?
A. Yes, sir.
Q. What was the value of the flax crop as it was on these lands at the time it was destroyed by these flood waters?
A. $958.50 net. I had the total crop on that.
Q. You put that in yourself?
A. Yes, the seeding and breaking and furnishing of seed in the spring. I had the whole crop, and I have deducted the expense of cutting, threshing and hauling to market. There is no twine bill expense on flax.
Q. Have you also deducted every other item of expense, if any, that would have been necessary to incur in putting it in?
A. Yes.
2160 Q. And computed it at what price per bushel?
A. $1.80.
Q. What was the price of the flax?
A. Flax during the month of October ranged from $1.71 to $1.92. I sold considerable from different places, ranging from $1.80 to $1.86, and I put it in at $1.80.
Q. And your wheat range in prices at what price did you figure that?
A. $1.15.
Q. How did you arrive at the price of $1.15?
A. Well, that is what I marketed practically all the wheat I had that fall at.
Q. That same fall?
A. Yes, sir. I held it over until in February of the next year.
Q. Now is that the price you got in February, 1916?
A. Yes, sir.
Q. What is your market?
A. Blackmer for this.
Q. Your market for this piece of land?
A. Yes.
Q. What was the prevailing market price at your market for wheat?
A. I think at the time of threshing in the fall it would have been in the neighborhood of 95¢ but it varied a great deal that fall.
Q. Would you say 95¢ was the mean average price?
A. 95¢ would be the lowest price.
Q. What was the highest between August 15, 1915, and January 1, 1916?
2061 A. It ranged from 95 cents to $1.25.
Q. How did you compute the value of your wheat crop to the damage sustained by the loss of this wheat crop on the mean of those two prices of wheat, $1.15?

A. I computed at what I sold at, but it would be about an average price.

Q. Between August 15th and January 1st?

A. Yes, sir.

Q. Will you give the damage to your hay crop on the land for that year, 1915 occasioned by these flood waters?

A. I lost the whole income on it, 74 acres at $3 an acre would be $222.

Q. At $3 an acre, is that in the field?

A. That is in the field without being cut.

Q. That was the net loss?

A. That was the net loss. I would have no expense whatever out of that.

Q. How did you arrive at $3 per acre?

A. That is the usual price for hay land and pasture of that character under our leases.

Q. Now will you tell the court the total of your losses on all crops for the year 1915?

A. You mean the net total?

Q. I mean the total of those items you have given?

A. $1,649.

Q. Now taking the year 1916, Mr. Powell, will you compute your losses on those lands for the year 1916, or your damages occasioned by these flood waters?

A. I figured that that farm would be seeded to wheat.

2162 Q. How much?

A. 86 acres, owing to the fact that it was absolutely new land, and we usually put that land to wheat. And figuring it on the half basis, the way I rent my farms——

Q. Crop rental basis?

A. Yes, sir, on the half plan.

Q. Such as talked about in the evidence here?

A. Yes, and figuring the yield at 6 bushels per acre and the price at $2.00 the wheat would have yielded me $516 and I would have had an expense out of that of $161.30.

Q. For what?

A. For seed, threshing, hauling and twine.

Q. Now, how much would that have netted you then as your loss of the wheat land for the year 1916?

A. $354.70.

Q. Now, in arriving at that estimate you have deducted every item of expense that you would have had to incur or bear to get the crop into market?

A. Yes, sir.

Q. What would become of the balance of the yield, go to the tenant?

A. Yes, sir.

Q. Now tell us with respect to the 74 acres remaining?

A. I figured it a total loss of $222.

Q. Hay?

A. Yes, sir.
Q. That is at $3 per acre, is it?
A. Yes, sir. It would be a net loss for 1916 of $576.70.
2163 Q. Now in arriving at that net loss that you have given have you included and deducted every item of expense that would have been necessary to put this crop in the market?
A. Yes, sir.
Q. Now I will ask you to state what loss or damage you sustained by these flood waters on these premises in the year 1917?
A. Well, I figured that the acreage under cultivation would have gone back into wheat.
Q. That would be 86 acres?
A. Yes, sir.
Q. On the crop rental plan?
A. Yes, sir, I figured ten bushels to the acre.
Q. What would have been the amount of loss on your wheat crop that year, as you have computed it?
A. I computed the price at $2.06. That is our market price at White Rock. I imagine from what the testimony has been here they are probably paying one cent less at Blackmer.
Q. Computed it at the market point?
A. $2.05 I would have received $881.50.
Q. For your share of the crop?
A. Yes, sir.
Q. In arriving at these figures have you deducted the amount or items of expense necessary to put it in the market?
A. There is a deduction from that grain crop of $273 covering seed, threshing, hauling and twine.
Q. And does that include every item of expense that would have been necessary to incur to put it into the market?
2164 A. Yes, sir.
Q. How did you arrive at that price of $2.05 per bushel?
A. That is the price set by the government.
Q. When?
A. Fall of 1917.
Q. The price went into effect on September 1st?
A. Yes, sir.
Q. Was that the price paid down at the market point for wheat?
A. No, that was the price paid locally.
Q. At your market?
A. Yes, sir.
Q. Now let us take the 74 acres remaining on that quarter. What was the effect of these flood *whatevers* on whatever crops were on those lands?
A. I sold the hay land on the 74 acres, but I had to sacrifice a dollar an acre on account of its being full of old growth.
Q. What did you get?
A. I got $2.00 an acre. $148 for it. I figured a loss of $74 on it.
Q. Was that your net loss—that was the value of the hay?
A. That was the net loss after getting $2.00 per acre for the sale of the hay privilege.

Q. That is on the crop basis plan?
A. No, I rent the hay for cash.
Q. These figures you have given for 1916 and 1917, stated as damages, are what would accrue to you as a propper rental value for the lands had they not been overflowed?
2165 A. Yes, sir.
Q. Now, will you give the total of the loss for the year 1917 as you have computed that?
A. $682.50.
Q. Does that include your hay land?
A. Yes, sir.
Q. Mr. Powell, state what the average yield of wheat per acre was on land in that vicinity in the year 1916?
A. They raised from 3 to 6 bushels.
Q. That about the average in your community?
A. Yes, sir, from 3 to 6.
Q. Why did you compute the average wheat yield for 1917 as 10 bushels per acre?
A. The average of the wheat was at least 10 bushels in the locality.
Q. On lands not affected by these flood waters?
A. Yes, sir.
Q. And in the neighborhood of your lands?
A. Yes, sir.
Q. Have you farmed this piece of land regularly or had it farmed ever since you have owned it?
A. Well, I have just had it since the spring of 1914. That is the first I cropped it.
Q. Have you computed the rental value of this land for the year 1915, Mr. Powell?
A. I gave you that, I believe.
Q. Will you kindly compute the rental value of these premises for the year 1915 on the crop plan, the wheat, flax and hay?
A. $479.25 on the flax. That would have been a total of $1,169.75.
2166 Q. What is the wheat?
A. $468.50. Rental value and hay $222.
Q. That would be the rental value of that year on the crop plan?
A. Yes, sir.
Q. Now, what would be, Mr. Powell, the total value of the crop of 1915, including the tenant's share?
A. $2,117.50.

Mr. Bronson:

Q. Who was the tenant in 1915?
A. I don't believe I can give you his name, he was only here one year and went back to Illinois. I know his first name was John, we always called him John, I don't recollect his last name.

Mr. Pinkney:

Q. What condition did these flood waters that were on your lands in the years 1915, 1916 and 1917 leave you- land in?

A. The hay land, of course, was left with a great big growth of dead hay, and the part that was under cultivation, with a growth of cat-tails.

Q. How extensive was that cat-tail growth, all over the land that was cultivated?

A. There was a little of it where the water stood probably a little longer than the others, seemed to have been drowned out entirely, but most of it was covered with a rank growth of cat-tails.

Q. What affect did that have on the ability to, kill the soil, work the land?

A. It makes it very hard, of course, to work for a year or two to come.

Q. Have you estimated what would be the cost per acre of
2167 restoring these lands to their former state of cultivation, these lands of yours that were covered with those floods?

A. Well, if I had to hire the plowing done on that land it would certainly cost me more than ordinary plowing and of course it will not be in as good condition to crop in this next year as it would be otherwise, the soil would be loose.

Q. What would be your judgment of your damage to the land from the flood waters, that is, damage from the cause I have indicated?

A. You mean to the land itself or to bring it back to its former state of cultivation?

Q. To bring it back to its former state of cultivation and arability?

A. I think the estimate that has been made of $5.00 would be reasonable enough on it.

Q. Then your damage in that regard would be how much on your piece of land?

A. I don't think I could claim my damages ordinarily because I do not expect to hire it plowed and disked and otherwise worked. I am going to rent it and the renter will put it in condition but the renter will have to put in more horse power and more time in doing it.

Q. And your judgment is that it could not be restored for less than an expense of $5 an acre?

A. I think, taking into consideration the damage due on the yield of next year's crop, the soil being loose from that being turned under, there will be at least that much damage.

Q. That includes the additional expense of plowing?

A. Yes.

2168 Q. Do I understand you to say that you desire to include that in your claim for damages or not?

A. No, I do not care to include that.

Mr. Bronson:

Q. This just applies to the 86 acres?

A. 86 acres, yes, sir.

Q. You stated, Mr. Powell, that you were in the banking business, I presume at White Rock?

A. Yes, sir, and here prior to that.

Q. During the period that you have resided either at Fairmount or White Rock, have you become familiar with these lands, from Fairmount down to White Rock that were over flooded in the years 1915 and 1916?

A. Yes, sir.

Q. And does that familiarity extend through the period of your residence at the two places you have named?

A. Yes, sir.

Q. Have you to a greater or lesser extent become interested as an owner or otherwise in some of the lands that are situated within the territory that was overflooded in the years 1915 and 1916?

A. I have.

Q. The town of White Rock is how far south of the State line between North Dakota and South Dakota?

A. One mile.

Q. The population, White Rock is approximately how large?

A. Oh, in the neighborhood of 275 at present, I think.

Q. Greater or less than it was two or three years ago?

A. Less.

2169 Q. How much less if any?

A. About one quarter, there were about 350.

Q. If I understand correctly you went to White Rock about March 1897?

A. Yes, sir.

Q. And have been continuously there ever since?

A. Yes, sir.

Q. The Bois de Sioux river passes on the easterly side of White Rock north and south from Lake Traverse northward?

A. Yes, sir.

Q. You have had occasion to observe the conditions with reference to floods, with reference to the land being farmed in this territory that was overflooded in the years 1915 and 1916 during all of these years, you have lived at White Rock?

A. Yes, sir, I have.

Q. You have also had occasion and opportunity to observe the conditions with reference to floods in the town of White Rock itself during all these years?

A. Yes, sir, I have.

Q. You may state whether or not in the years 1915 and 1916, the Town of White Rock suffered with flood conditions.

A. We did, very bad shape.

Q. You may state, generally speaking, the character and length and kind of flood waters that you observed in the town of White Rock in the year 1915.

Mr. Palmer: That is objected to as not bearing upon the question of damages but bearing upon general conditions in the en-
2170 tire Bois de Sioux valley and the defendant will claim the right at the conclusion of this testimony on the part of the complainant to introduce further testimony as to general conditions in the Bois de Sioux valley.

The Commissioner: You may answer the question.

A. We commenced to be badly affected with water there about the 1st of July, 1915, and it continued on through the balance of 1915 and up into the year 1916, until about the 1st of June in the village. We had a great deal of surplus water.

Mr. Bronson: You saw the flood conditions there in 1897?
A. Yes, sir.
Q. At White Rock?
A. Yes, sir.
Q. Compare the flooded condition of 1915 and 1916 with those of the year 1897?
A. The flood in the year 1897 was caused by the excessive fall of snow we had that year and the season was late in breaking up and when the snow did break up and go it went all in a very few days. The valley was flooded from hill to hill with water but as soon as the Red River opened up to the north it got right on out of the way except that some that was in the lower spots and of course that stayed during the balance of the season. But it got off, generally got off to the cultivated fields so that they were put into crop, the bulk of them, that year.
Q. Compare the conditions with reference to length of time and extent the water stayed in and around the town of White Rock covering these years of 1897 and 1915 and 1916 as I have mentioned.
2171 A. It was very much more continuous in the years 1915 and 1916, than it was in 1897. The flood condition lasted about a month not to exceed a month.
Q. In the spring of 1897?
A. In the spring of 1897, and lasted for a year in the spring and fall of 1915 and 1916.
Q. Now on these lands north of White Rock in North Dakota and from the State line up to Blackmer did you see the flood conditions in the year 1915?
A. Yes, sir.
Q. And the year 1916?
A. Yes, sir.
Q. And quite extensively?
A. Yes, sir.
Q. In all of your residence at White Rock or Fairmount, have you ever observed a flooded condition in that territory of the same extent, kind or character as you observed in 1915 and 1916?
A. Not that stayed on the territory like it did in those years.

Q. In the spring of 1897, is or is not that prior to 1915 what might be termed the high water mark of flood conditions?

A. Yes, sir.

Q. And this you have already mentioned as succeeding a winter of heavy snows?

A. Heaviest we ever had, I think.

Q. You have already mentioned that the break up in the spring came suddenly?

A. Yes, sir.

2172 Q. In the spring of 1897 these lands north of White Rock in North Dakota toward Fairmount were flooded?

A. Yes, sir.

Q. Do I understand that the floods went off and that land was cropped?

A. The bulk of it was cropped; there was small acreages, of course, that was not, but the bulk of it was.

Q. What extent, generally speaking, was it cropped from Blackmer south to the State line?

A. Most of it that was under cultivation was put into crop in the spring of 1897.

Q. Mr. Powell, up to the time of those flooded conditions in 1915 and 1916, can you state approximately or by a range of prices the general market values of these lands in North Dakota that were farmed and cultivated between Blackmer and the State line in this territory that was flooded in the years 1915 and 1916?

A. You mean immediately prior to that time?

Q. Yes.

A. Well, they ranged from $45 to $75.

Q. Per acre?

A. Yes, sir. I think I have got that maximum price a little high, $65.

Q. And what generally speaking is the nature and character of the soil of this territory from Blackmer down to the state line that was over flooded in the years 1915 and 1916?

A. It is a heavy black loam, top with yellow clay sub-soil, some rock but the portions that are cultivated are comparatively free from rock.

2173 Q. You have owned lands in that territory?

A. Yes, sir.

Q. Bought and sold them?

A. Yes, sir.

Q. And are fairly familiar with values?

A. I think so.

Q. What has been the impairment in the market value of these same lands by reason of these flood conditions that existed in 1915, 1916 and 1917 and if the menace of such conditions be not removed?

A. Well, their value is principally speculative. It would be pretty hard to show any of those farms in there to advantage to make a sale at this time.

Q. That is, by reason of the flooded conditions that existed in the years 1915 and 1916 and perhaps somewhat in 1917, and the possi-

bility of a recurrence of those floods, have in your opinion impaired the market value of those lands to such an extent that you cannot say there is any market value now?

A. I don't think I would say that absolutely, but it would make a very slow proposition for an investment.

Q. Difficult to sell the lands under those conditions?

A. Yes, sir, very difficult.

Q. As a matter of fact, from your experience in farming, and observation of these lands, you may state whether or not for agricultural purposes lands that have been flooded in the years 1915 and 1916, and in the way these lands have been flooded, whether or not there is any market value for agricultural purposes.

2174 A. If the conditions continue, there is absolutely none; at least, I have not realized a cent until I got a little on the hay land this year on my land.

Cross-examination.

By Mr. Palmer:

Q. You are a resident and citizen of the State of South Dakota and have been for twenty years past?

A. Yes, sir.

Q. Have you contributed to this fund for the purpose of defraying expenses of carrying on this litigation with the State of Minnesota?

A. I contributed to a fund to hire counsel to aid the state of North Dakota in prosecuting the case.

Q. Whom did you pay it to?

A. I paid it into a general fund.

Q. Who collected that fund?

A. I think I paid mine to, as I remember it, to a committee what was appointed in South Dakota that was to raise the proportion that we were to raise down there to apply on it.

Q. And if damages were recovered by the state of North Dakota from the state of Minnesota, you expect to receive from the State of North Dakota your damages as you have testified to them here.

A. I certainly do.

Q. And you contributed towards the fund with that understanding and expectation?

A. It was contributed towards the fund necessary to defray expenses and hire the counsel.

2175 Q. When did you purchase this land that you have described in section 9 of township 129 range 47?

A. In December of 1913.

Q. What did you pay for it?

A. I paid $6,400 for it.

Q. That would be how much an acre?

A. $40.

Q. Did you buy it and pay cash for it, or was that in a trade?

A. In a trade.

Q. What did you trade for it?

A. I traded a quarter section of land at Barnesville, Minnesota.

Q. How long had you owned the land at Barnesville, Minnesota?
A. Two years.
Q. What was it worth per acre?
A. $35.00.
Q. What did you pay for it?
A. I paid $30.00.
Q. Did you get that in a trade too?
A. Yes, sir.
Q. What did you trade for it?
A. I traded in an automobile for part of the purchase price.
Q. You traded an automobile for the farm at Barnesville and then you traded the farm at Barnesville for the land in question?
A. I didn't answer that way.
Q. Answer it the way you want to.
A. I answered that I traded in an automobile as part of
2176 the purchase price, not for the whole farm.
Q. Pay the rest of it in cash?
A. Part cash and assumed indebtedness on the farm.
Q. $30.00 an acre.
A. Yes, sir.
Q. And then you traded that farm at Barnesville, for the land in question and figured the land in question at $40 an acre, you say?
A. Yes, sir.
Q. Whom did you get it from?
A. A. C. Hiat.
Q. Where did he live?
A. He lived in our east territory, six or seven miles east of this land.
Q. How long had he owned the land?
A. I don't know for sure but about three years I think.
Q. For what purpose had he used it?
A. He had been cutting hay on it and leased portions of it for hay privilege.
Q. He bought it about 1910?
A. I think so.
Q. Do you know what he paid for it?
A. I do not.
Q. Make any inquiry at all?
A. I never made any inquiry on that.
Q. Who owned it before he did?
A. An estate in Iowa, I think the name was Toogood. I am not absolutely sure of that.
Q. How long had the Toogood estate owned it?
A. They had had it for 10 or 12 years, possibly 15.
2177 Q. 10 or 12 or 15 years?
A. I think so.
Q. How far was this land from the city of Blackmer?
A. A mile and a quarter.
Q. It was 160 acres?
A. Yes, sir.
Q. And I assume from your testimony that you consider*ation* it good, tillable farming lands?

A. I don't think that I testified to that but then I would not have bought it if I had not supposed it was tillable.

Q. I say I assume that from the general course of your conversation that you considered it that way?

A. I got busy and broke some of it right up, I considered it suitable for that.

Q. Good, tillable farming land?

A. Yes, sir.

Q. It appears to have been patented some time in the year 1882 so that before you acquired it, it had laid there for some 30 or more years?

A. I don't know the conditions under which it was owned at all or why they did not cultivate it.

Q. It had never been broken or cultivated in any manner when you bought it?

A. No, sir, except to cut hay on it.

Q. No buildings had ever been erected upon it?

A. No, sir.

Q. What was the fair rental value of it in the year 1912 be*fre* you bought it?

A. I think that hay privilege at that time was renting for $2 an acre. It was an exceptionally fine piece of hay land, no
2178 rock on it.

Q. And they got $2 an acre for it?

A. I know that my leases provided for $2 an acre for pasture and hayland, since they have raised to $3.

Q. What was the fair rental value of it in 1911?

A. It would be the same, $2 per acre.

Q. And running back there to the year 1908, what was the fair rental value?

A. There wasn't any change as far as I can remember in those years.

Q. $2 an acre?

A. $2 per acre is about what they rented hayland for.

Q. You are unable to state any reason why this good farming land capable of raising large crops of wheat had never had a plow put into it in some 30 years after it was taken from the government and prior to the time you bought it?

A. It was owned by this estate for a good many years and Mr. Hiat was a renter, working a big block of land in Traverse County and he needed most of it for hay purposes, kept a lot of stock himself.

Q. Hauled the hay about how far?

A. He hauled it 5 or 6 miles.

Q. Then your only reason for thinking it was kept for hay was because the owner wanted to keep it into hay and haul the hay *from* 5 or 6 miles?

A. I think that was the reason Mr. Hiat left it; I don't know anything about the Toogood situation.

Q. Do you know the reason why there were never any buildings erected upon it?

A. No, sir, I have contemplated some building there.

2179 Q. You have known that land for about 20 years before you bought it?

A. Not the piece individually, I had seen it at a distance, I had not been on it.

Q. But it had not occurred to you to buy it before that time?

A. No, sir.

Q. Nor had you ever been offered an opportunity to buy it before?

A. No, sir.

Q. You think it was worth $45 an acre when you made this trade for it for $40?

A. Well, I wouldn't have traded and paid the boot unless I figured I could get it back out of it. I had been asking $50 for the place up to the time it got flooded; of course, then I stopped offering it.

Q. You acquired it in September, 1913?

A. December.

Q. Then you put 36 acres into flax in the spring of 1914?

A. Yes, sir.

Q. Why didn't you put it all in?

A. I had the bulk of it rented for hay land at the time and I didn't care to break any more, it was hard to get people to break.

Q. Hard to get people to break?

A. Hard to get people to break.

Q. It might all have been broken up that year?

A. All of the 86 acres could have been, it could all have broken, I didn't care to break it all.

2180 Q. The whole quarter section?

A. Yes, sir.

Q. And that same condition had obtained there for 30 years that the entire quarter section could have been broken up at any time and put into crops and paid some 40 or 50 per cent on the investment?

A. I wouldn't say that.

Q. Let's see, you got off of it that first year you say, $1,649?

A. No, sir, I didn't say that.

Q. How much did you get off of it?

A. I got nine and a half bushels to the acre of flax off of that 36 acres that is 1914, not 1915.

Q. What profit did you make off of the land in 1914, net?

A. I don't know as there is any evidence here as to what the value of flax was that fall, I omitted to look that up. I got nine and a half bushels to the acre, I know that.

Q. Don't you know anything about what returns you got from that land in 1914 or whether you got any or not?

A. Yes, sir, I had returns from every foot of it. In the neighborhood of $850.

Q. You made about $850 in 1914?

A. Yes, sir.

Q. Now, you assume that you would have made twice that in 1915?

A. I had more of it under cultivation naturally would, of course —put a lot of expense into it.

Q. What do you mean by saying you put a lot of expense into it?

2181 A. Went to the expense of breaking it up, putting in seed, paying for seeding and rolling the land, in the neighborhood of $500 expense.

Q. The plowing it up didn't cost anything in 1916, according to your figures?

A. No, sir.

Q. And the seed wouldn't cost anything in 1916?

A. No, sir.

Q. And it would all be profit in 1915 and 1916, if you could have put the land in?

A. I figured out the expenses.

Q. You have figured out the expenses?

A. Buying of seed and cutting and threshing, didn't I?

Q. I want you to tell me why it is that you made $850 in 1914 and that you would have made twice that in 1915?

A. Because a good flax crop is a very profitable crop, one of the most profitable in this country and I have 50 acres more of flax in that year than I had in the year before.

Q. Whether you would have got any returns from that flax is only an assumption?

A. The flax was mature and ready to cut inside of a couple of weeks.

Q. That is in 1915?

A. Yes, sir.

Q. And the wheat?

A. The wheat was matured and ready to cut in a very few days.

Q. That was the first of July?

A. No, 20th of July.

2182 Q. When did the water come up that year?

A. The water commenced to come up on the east side of my land the first of July and was clear across it on the 20th.

Q. Did you have any water there in the month of May?

A. No water at all, I broke that fifty acres with an engine.

Q. At what date did you break it?

A. Latter part of May I think, about May 20th to the 25th or 26th, something of that sort.

Q. From the latter part of May up to nearly the first of June you were breaking upon this land with an engine?

A. Yes, sir.

Q. And you noticed no waters conditions there whatever?

A. None whatever.

Q. Nor was the ground even soft?

A. Well, in some of the draws, one or two little draws, it commenced to get over where it was a little soft for the engine, on the east side of where we was breaking.

Q. And you noticed no perceptible rise in the Bois de Sioux river whatever along in July?

A. I was gone all the time from the first of June until about the 3d or 4th of July and noticed this after I got home, I went up there.

Q. What did you find?

A. I found water coming onto the land.

2183 Q. The water was just coming onto the land then?

A. It was on the hay lands, yes, sir.

Q. Where did the hay land lie?

A. On the east side.

Q. But it hadn't yet reached your crop on the west side?

A. No, sir.

Q. And it did not reach it until about the 20th of July?

A. I wasn't up there again until about the 20th but when I went up the 20th it was clear across the quarter.

Q. You didn't notice then along the first of June any notic-able rise in the Bois de Sioux river?

A. I was away during the whole of the month of June.

Q. When was the last date you were there before you went away?

A. I think it was the 30th of May.

Q. Did you notice at that time any perceptible rise in the river?

A. Yes, the river was coming up some then, we had been having some rain and it rained a great deal during the month of June.

Q. You had very heavy rain through the month of June and through the month of July?

A. Yes, sir, it rained quite a little.

Q. And through the month of August?

A. Yes, I think the rains were still heavier in the fall.

Q. And those continued on through the month of September 1915?

2184 A. No, not so much, I know we were delayed in threshing pretty late that fall, but later on the rains let up and we got our threshing done.

Q. And there was very little dry weather or pleasant spells between the rains that summer, Mr. Powell?

A. Through the months of June and July it rained pretty steadily.

Q. So there wasn't anything remarkable about there being water upon the land in view of the fact it was raining all the time, was there?

A. We have had conditions like that, prior to that when the water didn't come up as high as it did that time.

Q. When?

A. We had heavy rainfall in the year- 1909 and 1904.

Q. Steadily, the same as it was those years?

A. Yes, sir, so that our roads were out of condition all of the time.

Q. What crop was raised on this land in 1909?

A. I suppose the wild hay would grow there every year.

Q. You suppose, did you see it?

A. No, I told you it wasn't under cultivation.

Q. Did you see the land to see whether there was water on it in 1909?

A. I told you I didn't see the land until I bought it in December 1913.

Q. And when you stated that you thought it had been susceptible of cultivation through these various years, you stated it with no personal knowledge whatever, concerning it?

A. I figured I was answering general conditions not just governing a couple of years. I think you could have cultivated a
2185 great deal of it even those years.

Q. Did you make any inquiry when you bought this land as to whether it was subject to overflow from the Bois de Sioux river?

A. No, I did not, because I had been through the country enough so that I knew what the general conditions were.

Q. You had been through the country?

A. I had been on adjoining lands.

Q. But you hadn't been on this land?

A. Not on this particular piece, no, sir.

Q. And you judged this land from adjoining lands?

A. From what I could see of the lay of the land from the road.

Q. What road?

A. Running north and south past it, a quarter of a mile away from it.

Q. What road is that, that we call the Meridian Road?

A. Yes, sir.

Q. How much did you travel that road?

A. I traveled it often.

Q. When?

A. During all the years I have been here.

Q. What year was that road built?

A. I think it was made a Meridian road in 1912 or 1913.

Q. About the time you bought this land?

A. Yes, sir, but there was a good, well traveled road for a good many years before that; in fact, they have done very little
2186 labor in that district.

Q. Did you travel along that road in 1897 when you moved to White Rock?

A. Yes, I think I did.

Q. What time of the year?

A. During the summer of 1897.

Q. Was the road dry?

A. As I remember it.

Q. Can you state more specifically what time in 1897 you went along there?

A. I was back and forth, at that time we did not travel with cars, of course, we drove with teams.

Q. Why didn't you travel on the cars?

A. I say with a car, we didn't use automobiles.

Q. You didn't travel, on the train?

A. Yes, sir, I did some. I traveled from Fairmount to White Rock on the train.

Q. Any trouble getting through on the train that year, 1897?

A. There was some trouble during the freshet in the spring.
Q. The track was overflowed?
A. Yes, sir, the bed was washed out, some big surplus of water all of a sudden.
Q. You had not known the condition of this specific piece of land at all during the various years down to the time you bought it?
A. No, sir.
Q. Isn't it true that the government plat and survey shows the east eighty to be practically all swamp and marsh land?
2187 A. I have never seen the Government plat.
Q. Will you kindly look at it here?

(Exhibit 108).

A. It shows about one half of it as swamp land, one half of the east eighty.
Q. Do you think that is a mistake?
A. I should consider it so, I never have seen any swamp conditions there.
Q. Or any low conditions at all?
A. That portion of it is a little more apt to have water on than the balance of the land.
Q. You didn't break that up, did you?
A. I have not.
Q. Where did you do this 86 acres of breaking?
A. On the west side, west eighty, and 4 acres on the east eighty.
Q. There was no particular reason for that?
A. I broke it up there, I figured it was more susceptible to cultivation.
Q. Why?
A. It was further from the Bois de Sioux river, if there was ever any difficulty along that line.
Q. Did you have any reason to anticipate any difficulty from that source?
A. I had not in particular.
Q. There was no reason to anticipate that the Bois de Sioux river would ever overflow?
A. I knew, of course, that eighty lay lower that the other.
Q. You knew Mr. Powell, that the land was subject to overflow from that river, didn't you?
2188 A. Why, if the river went up, of course, as it has a few times, it is bound to go over there some.
Q. And that is the reason that that land lay there for 30 years without any improvement except to cut hay on it and that is the reason that you traded for it and got it when you did and got it cheaply, isn't it?
A. I don't think so.
Q. What reason do you ascribe then?
A. For purchasing?
Q. Yes.
A. I purchased it because there was an opportunity to get rid of land away from where I could handle handily.

Q. You say you have bought and sold some other tracts of land between the North Dakota line and Blackmer?
A. Yes, sir.
Q. What other land, what other tracts have you bought and sold in there?
A. I had the northwest quarter of 33.
Q. Township 129, range 47?
A. Yes, sir.
Q. When did you get that?
A. I think I bought that in the year of 1905 as I remember it.
Q. What did you pay for it?
A. I paid $4,200 for it.
Q. For the quarter section?
A. Yes, sir.
Q. That would be about $25 an acre?
A. $26.25.
Q. Did you trade for that or pay cash for it?
A. I paid cash for that.
2189 Q. Have some buildings on it?
A. Very small set, very little value.
Q. Who had been living there?
A. A party by the name of Weatherbee.
Q. How long had Mr. Weatherbee been there?
A. He homesteaded it, I think, he had probably been there 15 years.
Q. Mr. Weatherbee had homesteaded it and been there 15 years and then in 1905 he sold it to you for $26.25 an acre?
A. That is my recollection of it.
Q. And he had very poor buildings you say?
A. Buildings didn't amount to much.
Q. Had been raising any of these profitable and large crops of wheat and flax such as you raised on section 9?
A. Well, he had been raising some good crops but it was a very different matter in those years, the price was very low on farm products at that time.
Q. It was low prices that killed him off?
A. Principally.
Q. Wasn't there a good deal of swamp in the northwest portion of that quarter section?
A. No, sir.
Q. Not any at all?
A. There was about 4 or 5 acres of hay land in the northwest corner.
Q. There appears on the government map to be shown about 60 acres.
Q. Well, they got it wrong by a long ways.
2190 Q. That is wrong, is it?
A. Yes, it is a way wrong.
Q. There isn't more than 4 or 5 acres of low land there?
A. Just about.
Q. How long did you keep that land?

A. Three months.
Q. What did you do with it after three months?
A. I sold it.
Q. What did you get for it?
A. $5,200, as I remember it.
Q. That is how much an acre, about $41.25, isn't it?
A. $33 an acre.
Q. Did you sell it for cash or trade it off?
A. Sold it for cash.
Q. Whom did you sell it to?
A. I think the fellow's name was Silvernail, who used to be a land man at Fairmount. I imagine some of these Fairmount people would know better probably.
Q. How long did Mr. Silvernail keep it?
A. I couldn't tell you that.
Q. Q. Who owns it now?
A. I think it is a brother of Mr. Waddingham, either he or Mr. Waddingham himself.
Q. Anybody living there?
A. I couldn't tell you that, I think there is though.
Q. Crops raised there in 1915?
A. Yes, sir, I think so.
2191 Q. And in 1916?
A. Yes, I think crops raised on it in 1916.
Q. The consideration in the deed from Mr. Weatherbee to you appears to be $3,400 which would be about $20 an acre?
A. Well, I have had a good many land deals and I was making these statements by memory.
Q. You think then probably that is correct, about $20 an acre?
A. I wouldn't be surprised, I know I made $1,000 on the farm at the time I sold it.
Q. And the consideration in the deed from you to Stopperman appears to be $4,000 instead of $5,200; do you think that is about right?
A. I reserved a little crop on it and I know I figured that in the deal. I made $1,000 net, I know, including the crop. I was thinking it was——
Q. Was that about right?
A. Of course, those figures are right; as I stated I had a good many land deals and I was making those statements from memory.
Q. That was 1905, you say, and you think from then on to 1914 this land went up to $65 an acre?
A. No, I wouldn't think that the land was worth $65 an acre. I think some of the well improved pieces were worth $65. If that particular piece had improvements on it, would have been worth $65 of anybody's money at that time.
Q. Why didn't it have good improvements on it if it was good land?
2192 A. Well, it has been owned by parties since the homesteader sold it that didn't care to put improvements on it.

Mr. Waddington lives just across the road from it and he doesn't care to improve it any more, he can handle it without it I imagine.

Q. Well, what other tracts have you bought and sold in this valuable area?

A. I had a 200 acre farm right across the road from it in 28. I don't know as I can describe that offhand Southwest quarter of 28 and a 40 acre tract of 29 across the half-mile on the west of it.

Q. Practically 200 acres?

A. It was 200 acres fully.

Q. That is the land with the school house on it?

A. Yes, sir.

Q. Is that the ruined school house that has been spoken of here?

A. I couldn't state as to that.

Q. What is that school house worth do you think?

A. You mean at present?

Q. Yes.

A. I should think about $350 probably.

Q. What was it worth before the flood?

A. I don't know what the flood damaged it.

Q. Flood damage it any at all?

A. I don't know anything about that.

Q. Still stands there, doesn't it?

A. Yes, sir.

Q. They are holding school in it aren't they?

A. I think so.

Q. What year did you buy this 200 acres in 28?

2193 A. I think it was in 1901, I am not absolutely sure of that though.

Q. What did you pay for it?

A. I paid $3,000 for it.

Q. That would be $15 an acre?

A. Yes, sir.

Q. Did you buy it outright or did you trade for it?

A. I bought it outright.

Q. Whom did you buy it from?

A. From James Chilson.

Q. Did he live on it?

A. It was his homestead.

Q. He had homesteaded it from the Government, had he?

A. He had homesteaded the quarter, I don't know just how he got the 40.

Q. How long had he lived there?

A. I think that he had lived there at least 15 years.

Q. Did he have good improvements?

A. There was a pretty fair house there, the way houses were figured then I imagine it cost probably $650. The barn didn't amount to anything. There was a small granary, the barn was nothing more or less than a straw shed.

Q. He homesteaded it, lived there about 15 years put these buildings on it and sold it to you for $15 an acre?

A. Yes, sir.

Q. Didn't he raise any of the large and profitable crops of wheat and flax?

2194 A. If you had known Jim Chilson you would have known why he didn't make any progress. He was one of those follows who didn't make progress.

Q. That was the right kind of a man to be on this land, wasn't he Mr. Powell?

A. If he had a yield of crops, it was all right, he would never make any progress anyway.

Q. Whom did you sell it to?

A. G. W. Andrews.

Q. Where does he live?

A. The last I knew of him he lived at Davie, North Dakota.

Q. What did you get for it?

A. I got $4,500.

Q. For the 200 acres, $22.50 an acre; what year did you sell it?

A. I sold it the latter part of the next year, I think, yes, I had two crops off of it; I think I sold it in October of 1902.

Q. Does your purchaser own it yet?

A. Mr. Waddington's brother or the one or the other own it, I don't know how it stands.

Q. Any body living on there?

A. No buildings on it.

Q. Crops raised on there in 1915?

A. Yes; there were some crops, I don't know how much.

Q. 1916?

A. I don't think there was anything raised in 1916 on it.

Q. It appears from this Government plat that something like 100 acres of that land was swamp and marsh?

2195 A. You got that badly over estimated.

Q. How much swamp and marsh do you think there is on it?

A. About 25 acres of hay land. There is a little of that right down close to the bridge that I don't think they ever cut hay on but the balance of it it all pasture land and hay land.

Q. You think that the government surveyors made a mistake there then of about 75 acres any how?

A. I think you got it over estimated, yes, sir.

Q. What would you say is shown by the plat there to be swamp and marsh?

A. You are taking into consideration a 40 to the west of it that wasn't on my farm at all.

Q. Just make an estimate there about what is shown by the plat there?

A. About 25 acres of my piece that was hay and pasture land.

Q. I mean as shown by the plat there?

A. I say, that is about what it is. You have included in this 40 acres that wasn't in my farm at all.

Q. Where?

A. On the west side, right here in 29.
Q. I thought you said there was a 40 there on the east side?
A. There is; I was thinking it was in here. Well, it is not correctly stated on the may anyway.
Q. Am I correct in saying that the plat shows about one hundred acres of swampy land?
A. No, it dosen't show 100 acres, it shows about 80 acres.
2196 Q. If shows this 40 on the east side, dosen't it?
A. Most of it, part of it up there that isn't shown and it shows over here about the same amount.
Q. And then the low land easterly of that; is there low land there?
A. There is no low land as much as that.
Q. I say the plat shows low land there, 100 acres or more.
A. Yes, I guess the plat shows it.
Q. What was that land worth in 1914?
A. About $50 and acre $55 probably.
Q. What is it worth now?
A. Well, I don't know whether it would sell very well at the present, in fact I haven't seen it for the last—I haven't been right on to it the last year, so far as I remember. I don't know just what condition it is in, whether it is plowed or not.
Q. What other tracts of land in this territory did you buy and sell since you have been in business?
A. I had an interest in the east half of 21.
Q. The east half of 21; when did you get that interest?
A. I think the north quarter in 1911, the south quarter I think in 1912.
Q. Take the southeast quarter in 21, and say in 1912, you got an interest in that. What interest did you get?
A. Well, I was a stock holder in a corporation, had a third interest in it.
Q. You- corporation owned the whole interest then?
2197 A. Yes, sir.
Q. What did it pay for it?
A. I think we paid $32 or $33 an acre, for it.
Q. In 1912?
A. Yes, sir.
Q. Did you buy it out right, this corporation?
A. Yes, sir.
Q. Didn't make a trade for it?
A. No, sir.
Q. Whom did you buy it from?
A. I don't remember who did own that piece.
Q. Wasn't it a man by the name of Anderson?
A. Yes.
Q. He lost it on a mortgage foreclosure, didn't he?
A. It was foreclosed, we bought it after the mortgage was foreclosed.
Q. Did Anderson live on it?
A. Anderson homesteaded it. No, he didn't either homestead it

there was another party by the name of Anderson that homesteaded it though.

Q. How long did Anderson live on it?

A. As I recollect it, he was there six or seven years.

Q. Do you know who he got it from?

A. I think he got it from the homesteader, another fellow by the name of Anderson.

Q. Do you know how much he paid the homesteader?

A. No, sir, I do not.

Q. Did he have buildings on there?

A. Yes, sir, a very poor set.

2198 Q. A very poor set of buildings?

A. Yes, sir.

Q. This last Anderson then bought from the first Anderson, had the land five or six years and then lost it on a mortgage foreclosure?

A. Yes, sir.

Q. Did he raise any of these profitable crops of wheat and flax and stuff?

A. He raised some of them but he had a very large family and he was a very unthrifty fellow. A fellow that wouldn't make a go anywhere.

Q. Just about the type of fellow you would find on this land?

A. No, sir, I don't think so; there were a whole lot of them strung over the country.

Q. Where is this Anderson now?

A. I think he is in Canada.

Q. Isn't he a well to do, prosperous man where he is?

A. I don't believe he is, I don't believe he could be.

Q. Do you know anything about that?

A. No, sir, I couldn't say. Somebody would have to give it to him if he was.

Q. This first Anderson, did he give this land away to Otto Anderson?

A. I don't think so.

Q. I thought you said that if Otto Anderson acquired anything somebody would have to give it to him?

A. He had a little bit of cash he had saved up in a lifetime.

2199 Q. It didn't take but a little bit of cash to buy out the first Anderson?

A. It didn't after assuming the big mortgage.

Q. How did the first Anderson happen to have a big mortgage on it, do you happen to know anything about it, after he homesteaded it?

A. I don't know anything about that.

Q. He homesteaded it, so it didn't cost him anything?

A. Yes, sir.

Q. Then he put a big mortgage on it and then sold it to Otto Anderson for a little bit of cash and then Otto Anderson lost it on a mortgage?

A. That is the record of a great many farm operations. Any-

where in this valley or a good many other places through these states.

Q. It is a record of a good many farming operations in this valley?

A. It makes a difference who the man is. We have got some as prosperous men on the flat as anywhere.

Q. But they are not down there between Blackmer and——

A. They are on land similar to what that is.

Q. I wish you would tell me of one well to do prosperous farmer living easterly of that road from the south line of North Dakota up to Blackmer comprising sections 33, 34, 27, 28, and 21.

A. Easterly of what road did you say?

Q. That road that goes straight to Blackmer?

A. Straight south to Blackmer?

Q. Yes, sir.

2200 A. Well, there is Edward Erickson.

Q. How long has he been there?

A. He homesteaded his land there, I don't know how long he has been there, I imagine 25 years.

Q. Good buildings?

A. Yes, sir, very fair set.

Q. Good prosperous place?

A. Yes, sir.

Q. Tell me another one.

A. I think Mr. Waddington is in that district.

Q. Where does he live?

A. He lives in 29.

Q. That would be westerly of this district?

A. Yes, sir, but he owns most of his lands in that district, in 33 and 28.

Q. How long has he been there?

A. 15 or 16 years.

Q. Tell me another one.

A. Mr. Lundberg.

Q. He owns land in 34, southwest of 34?

A. Yes, sir.

Q. Good prosperous place?

A. Yes, sir; he has had as hard a time as any of them but he is a mighty prosperous fellow.

Q. Did he homestead his land?

A. Yes, sir.

Q. Is there any other?

A. The bulk of that land is owned by,——

Q. You can't think of anybody else then?

A. No, that is about all the settlers in there, there has been some that had to get out the last couple of years. They were

2201 renters, of course.

Q. They were renters?

A. Yes, sir.

Q. Now, tell me about this northeast of 21, You say your corporation acquired that in 1911?

A. I think it was 1911.
Q. Whom did they get it from?
A. Fred Wheeler.
Q. Where does he live?
A. Wheaton, Minnesota.
Q. How long had he had it?
A. I think he had it three or four years.
Q. What did your corporation pay him for it in 1911?
A. I think we paid him $4,800,—$30 an acre.
Q. Any buildings on it?
A. No, there had been a little set there but I think they were moved away.
Q. Anybody living on it when you bought it in 1911?
A. No, sir.
Q. Was it cultivated at all?
A. All under cultivation.
Q. Who was cultivating it?
A. Well, the renters that we had were some fellows by the name of Peterson.
Q. Then you say Wheeler had had it about three years; do you know whom he got it from?
A. From a homesteader, a fellow by the name of Juleen.
Q. Do you know what he paid Juleen for it?
A. No, sir, I couldn't say.
2202 Q. The consideration in the deed appears to be $2,800?
A. You mean to us?
Q. No, Juleen to Wheeler, about $18.00 an acre. *Q.* Do you know how long that homesteader had been there, Juleen?
A. Oh, he had been in there 12 or 13 years.
Q. He homesteaded it and lived there 12 or 13 years sold it for $18. an acre and then Mr. Wheeler held it three years and sold it to your corporation for $30?
A. That is as I recollect it.
Q. You- corporation has disposed of it since?
A. Yes, sir.
Q. To whom?
A. J. A. Westerman.
Q. For how much?
A. We sold him the whole half section I think.
Q. For how much?
A. I didn't have charge of the sales in that corporation, but as I remember it that farm was sold for $42 an acre, $45 it might have been, $45 I guess it was.
Q. You think about $45 an acre?
A. It was somewhere about $42 or $45 I wouldn't say for sure.
Q. The deeds appear to express a consideration of $9500?
A. You may have it correct.
Q. For the whole half section?
A. $9500.
Q. Yes, sir; that is about $30 an acre? Do you think that is right.

2203 A. No, it wasn't as much as we got for it. We got something beside his cash payment, and I have forgotten what it was now, a stock of goods, I think, I don't think it was shown in the deed probably.

Q. You think you got, besides this $9,500 you got——

A. We got a stock of goods.

Q. Mr. Westerman got it yet?

A. Yes, sir.

Q. How much do you think that land was worth in 1914?

A. Well, that was worth about $45.00.

Q. Do you think the Anderson land, southeast of 21, was worth about that too?

A. Yes, sir.

Q. About $45?

A. Yes, sir.

Q. What other land did you buy and sell in there?

A. I had an interest in the northwest quarter of that same section.

Q. That is the quarter on which the village of Blackmer is located?

A. Yes, sir.

Q. When did you get that?

A. I acquired an interest in that in the spring of 1897.

Q. Was that a corporation acquired that?

A. No, sir.

Q. You and another party?

A. Yes, sir, a partnership.

2204 Q. What did you and the other party pay for it in 1897?

A. Mr. Houston had a half interest in that land and I think he and Mr. Ballard paid $1,200 for it in 1896.

Q. $1,200 for a quarter section?

A. In 1896, I think they paid $1,200 if I remember.

Q. About $7.50 an acre?

A. It was a very poor piece.

Q. I think Mr. Houston's testimony was that he paid $6?

A. It was a very poor piece.

Q. What is the matter with it?

A. Cut up with draws and lower than all the other pieces around it and catches water when the other pieces don't get it at all.

Q. You think that $6 or $7 an acre in 1897 was about what price was paid for it by yourself and Mr. Houston.

A. Well, he acquired his interest the year before I did. As I remember it, I bought out Mr. Ballard's share in it.

Q. How long did you keep it?

A. I think we had it just one year and sold it on crop payment plan.

Q. For how much an acre?

A. I believe we sold it for $2,000 an a crop payment plan, as I remember.

Q. About $12 an acre?

A. Yes, sir.

Q. Party got it yet?
A. Party had it for a good many years.
Q. What did he do with it while he had it?
2205 A. Well, he rented it himself the first year, I know. We hired him to break part of the land in the spring of 1897.
Q. Did he crop it?
A. He cropped the piece that he broke. There wasn't a great deal of it he could break that spring.
Q. What was the matter?
A. It lies a little low as I say and it was all cut up with a lot of draws. It was hard to break through and get a piece that amounted to a great deal in one tract.
Q. Had some water on it then?
A. Had some water on it, yes,—on the low part it didn't on the higher parts.
Q. About how many years did he keep it?
A. I think he must have had it 7 or 8 years.
Q. Whom did he dispose of it to?
A. I couldn't tell.
Q. Do you know what he got for it?
A. No, sir.
Q. What was that land worth in 1914?
A. Well it is a very poor piece of land to invest in.
Q. Always has been?
A. Yes, sir. I should imagine it was worth probably 1914 probably figured worth $20 per acre, might be $25.
Q. What other lands have you bought and sold in that locality?
A. That is all.
Q. Now, the highest that you got on any of this land has been $45 an acre. Where is the $65 land in 1914?
2206 A. Well, Mr. Waddington's land is worth $65; Mr. Sauter's land is worth $65, parts of it.
Q. Mr. Waddington's land was not overflowed in 1915 and 1916, was it?
A. Yes, sir, I think his land was in 1916 part of it, a good deal of it.
Q. How much of it?
A. I think close to half of it?
Q. Did you see it overflowed?
A. No, but I know what the conditions were.
Q. Is that the land that he bought from you?
A. I heard him say that he had trouble with the water.
Q. Did he have any land except this in 28?
A. Yes, sir, he had in 29.
Q. You think some of his land in 29 was overflowed?
A. His best land is in 29.
Q. You think that was overflowed?
A. I don't think it was, a great deal of it. Might have been some on the southwest corner.
Q. He hasn't made any complaint to you, has he, or to anybody else as far as you know of the overflow of any of his land in 29?

Mr. Pinkney: Objected to as hearsay and argumentative, not proper cross-examination.

A. I know he had some that was affected; he had some land in 28 and some in 33.

Mr. Palmer:

Q. He has some marsh lands on his lands in 29, hasn't he, southeastern corner?

A. Some that is marked marsh land, sure he has.

2207 Q. I suppose he had some water on that in 1916?

A. Oh, yes.

Q. But there was no substantial overflow of his land in 1915 or 1916, either one, was there?

A. Yes, sir, I think there was.

Q. You think the value of his land was impaired or that he lost any crops?

A. He lost some crops.

Q. Do you think the value of his land was impaired?

A. I think it was some.

Q. Mr. Sauter, was any of his land overflowed in 29?

A. Yes, sir, a good deal.

Q. In 1915 and 1916?

A. Yes, sir.

Q. And impaired in value?

A. Yes, sir.

Q. What part of Mr. Sauter's land was overflowed?

A. I would rather he would testify to that, I didn't look it over carefully. Well, there was a good deal on the west half of 29, I imagine three fourths of it was affected.

Q. That is the land furtherest from the river, and the land indicated on the plat here as swamp land, isn't it?

A. Yes, but it has been cropped every year practically since I have been here. There is only a very little piece marked swamp land on here.

Q. Tell me some more $65 land in here that was overflowed?

A. The Edward Erickson land is worth $65.

Q. Was that overflowed?

2208 A. Part of it was.

Q. Part of it put into crop?

A. Part of it put into crop.

Q. In both 1915 and 1916?

A. Yes, I think that he put in some both years.

Redirect examination.

By Mr. Bronson:

Q. Counsel has asked you a great many questions about the particular condition of those lands in 1915 and has asked you about specific names. You are simply stating as I understand it, your general recollection?

A. That is it.
Q. Wothout having made a personal visitation on each of the lands?
A. Yes, sir.
Q. That you have mentioned in the years 1915 and 1916?
A. Yes, sir.
Q. Only as you might have gone by and observed it?
A. Of course, in mine I made a little more.

Mr. Pinkney:

Q. Do you know the conditions around Blackmer in 1915 and 1916 as to flood conditions?
A. Yes, sir, I was in there quite a little. I know they had trouble to get to the Blackmer elevator.
Q. On account of the flood waters?
A. Yes, sir.

(At this time recess was taken until 9.30 a. m. November 7, 1917.)

2209 Hearing resumed pursuant to adjournment, with all parties present, at 9:30 a. m. Nov. 7, 1917.

WALLACE J. TAYLOR, recalled as a witness on behalf of complainant, and having been heretofore sworn, testified as follows:

Direct examination.

By Mr. Pinkney:

Q. Mr. Taylor, you are the same gentleman who was called and testified at a former hearing of this case in St. Paul, are you not?
A. Yes, sir.
Q. You are a resident of what place?
A. The village of Fairmount, Richland County, North Dakota.
Q. Do you own any land in Fairmount township, Richland County, North Dakota?
A. I do.
Q. Will you give a description of it?
A. West half of the West half of 4, and the east half of the east half of 5, 129, 47.
Q. How long have you owned those lands?
A. Since the spring of 1880.
Q. How long have you been a resident of the village of Fairmount, Richland county, North Dakota?
A. I have been here in the village—I moved in here in 1895, lived here three years, then went back on the farm and lived five years and then have been here since that time continuously.
Q. How long *ahve* you lived in Richland county, North
2210 Dakota, in this vicinity?
A. Since the spring of 1880.
Q. What is your age, Mr. Taylor?
A. Fifty-eight soon be fifty-nine.

Q. And your business during most of your life has been what?
A. Farming.
Q. Did you cultivate this land you have described for a number of years?
A. I did.
Q. About how many years did you cultivate this tract of land?
A. Well, it has been leased out five years. With that exception I practically cultivated it all the while.
Q. Since the year 1880?
A. Yes, sir.
Q. What character of crops have you produced on it from time to time and year to year; that is what variety?
A. Wheat, oats, barley, corn, flax, potatoes.
Q. What is the last year you farmed it yourself?
A. 1903 was the last year that I resided there.
Q. I didn't ask you that. What is the last year you farmed it yourself?
A. My son has lived on the place for the last twelve years.
Q. He is farming it for you?
A. Yes, sir. I practically oversee the work at the present time.
Q. He is doing the work for you?
A. Yes, sir.
2211 Q. Now, Mr. Taylor did you raise any crops on these lands in the season of 1915?
A. I did.
Q. Were these lands flooded?
A. Some of them.
Q. How much of them?
A. About eighty acres.
Q. The total tract is what, owned by you?
A. 320 acres.
Q. And about twenty-five per cent of the land was flooded?
A. Yes, sir, in the year 1915.
Q. Q. On these lands that were flooded in the year 1915 did you harvest the crops?
A. No, sir.
Q. Did you harvest the crops on the lands that were not flooded?
A. I did.
Q. What was the kind of crops that you had on these flooded lands in the year 1915?
A. Oats, hay, corn and wheat.
Q. Can you give the acreage of those different kinds of grain that were on this flooded tract?
A. Forty acres of oats, ten acres of wheat, ten acres of hay and twenty acres of corn.
Q. You say you harvested no part of those crops that were on this eighty acres that year?
A. No, sir.
Q. What eighty was that?
A. We sowed 51½ acres of oats on the south end of the west

half of the west half of 4. We harvested 11½ acres on the
2212 west side of that piece. On the west side, understand, of that 51½ acres. The forty farther east was covered with water so we couldn't get on to it to harvest it. A little farther north of that stood ten acres of hay; farther north still stood twenty acres of corn and still farther north and on the extreme east of the north eighty on the west half of the west half of 4 we lost ten acres of wheat. The balance of it was harvested.

Q. What was the kind of crops you harvested on the lands not flooded that year owned by you in this same tract, this 320 acre tract?

A. We had some of the best oats I ever raised.

Q. Give the character of the crop first?

A. I had oats.

Q. How many acres?

A. 51½ acres we sowed and we harvested 11½ acres.

Q. What did that yield per acre of oats?

A. About 70 bushels.

Q. Now tell the court what condition the oats was in at the time they were destroyed on this 40 acres?

A. They looked very promising.

Q. How near the harvesting point had they reached at the time the flood waters came on them?

A. At the time the flood waters reached the very eastern portion I think they were pretty green, but the water gradually came up in the oats and in fact at the time—perhaps the 25th of July—I think we cut this 11½ acres a little green thinking that the water would still come higher. I think the first waters reached the oats on the extreme east somewheres about the 12th or 15th of July, and they were quite green at the time.

2213 Q. Now were the oats that were lost on that forty-acre tract, at the time they were destroyed by these flood waters, as promising for a crop of oats at those you harvested?

A. Yes, sir, just as good.

Q. Now what was the value of that forty acres of oats that was destroyed by the flood waters on your lands in 1915? Have you computed it?

A. I have.

Q. Will you tell the Court what your loss was—what the value was?

A. The entire value do you mean?

Q. I mean the value of the crop of oats as it stood on that forty acres of land?

A. $1,260. Then deducting the cost of harvesting, threshing and marketing, $236, leaves my loss $1,024 on the oats.

Q. Now did you deduct every item of expense in arriving at those final figures that you would have been put to, to put these oats on the market?

A. I did, and even a little more.

Q. Did you lose the straw from that forty acres of oats?

A. I certainly did.

Q. Was that of any value?

A. It was.
Q. What was the value of the straw that was lost?
A. That is pretty hard to get at. I would place it at $50.
Q. What is it valuable for?
A. Oats straw is very valuable for feeding stock.
2214 Q. Did you keep a lot of stock?
A. A good many horses and a few cattle.
Q. And oats straw is valuable for feed?
A. Yes, sir.
Q. And you used it for that purpose?
A. Yes, sir.
Q. Did you figure the straw in the loss you have given as to the value of the crop?
A. No.
Q. Then it would be $50 in addition for the straw?
A. It really ought to be. I didn't put that in there which I ought to have done.
Q. Now will you tell us if you harvested any wheat on your lands that were not flooded that year?
A. Yes, sir.
Q. How many acres did you harvest?
A. All told.
Q. On lands not flooded down there on this tract?
A. I couldn't just say how many acres of wheat we had that year, but at any rate on this particular piece adjoining the flooded area we had wheat on that.
Q. How many acres was that?
A. About sixty acres.
Q. What yield did you get per acre?
A. About eighteen bushels.
Q. Now will you tell the court whether or not this ten acres of wheat that was lost by the flood waters was in the same general condition and of the same quality?
A. It was the same general condition when the water reached it.
2215 Q. And it was on land adjoining the sixty acres you mentioned?
A. Yes, sir, the same piece of land.
Q. Have you computed your loss and damage on that ten acres of wheat?
A. I have.
Q. Will you tell the court what the value of that ten acres of wheat was as it stood on the land immediately preceding the time it was destroyed by these flood waters?
A. The damages on ten acres was at 18 bushels to the acre, 180 bushels, $180. I made a contract to sell my wheat for a dollar a bushel.
Q. Have you deducted from that all items of expense which you would have had to incur to put it in the market?
A. Yes, sir.
Q. That was your net loss on that ten acres?
A. The expense would be $29.80.

Q. Well, the $180 is net?
A. No, it is not.
Q. Well deduct your expense?
A. Deducting the $29.80 leaves practically $150.
Q. Now I will call your attention to the ten acres of hay that you said you lost. Have you computed the value of that ten acres of hay?
A. I have.
Q. As it stood on your lands immediately preceding its destruction by these flood waters?
A. I have.
Q. Will you state to the Court what its value was?
2216 A. $160.
Q. Now in arriving at those figures have you deducted all the expense you would have been put to?
A. Not out of the $160, no.
Q. Will you deduct the expense?
A. The expense is $60, leaving the balance of loss $100.
Q. How did you arrive at that?
A. Hay was worth $8.00 a ton in Fairmount. We happened to cut two acres of that hay and we got five big loads. A very choice piece of hay and I figured we could cut that hay and deliver it in Fairmount for $3.00 a ton, and it certainly went at least two tons to the acre. I figure the loss on that hay $100.
Q. After deduc-ing all expense of cutting, marketing, etc.?
A. Yes, sir.
Q. I call your attention to the twenty acres of corn crop which you say was destroyed on these lands. Will you tell the court what the v*la*ue of that twenty acres of corn was as it stood on those lands just prior to its destruction?
A. $390.
Q. Have you deducted from those figures the entire expense of gathering, shelling and marketing?
A. I have not. Later on I have deducted $60 for husking, shelling and marketing, leaving a balance of loss of $330.
2217 Q. Do those last figures $330, represent the net loss to you after deducting all expense?
A. It does.
Q. Now will you tell the court what the total loss in 1915 was?
A. $1,654 net loss.
Q. That is the net loss of the crops that were lost on these lands in 1915, at the time they were destroyed?
A. Yes, sir.
Q. Now, Mr. Taylor, assuming that you had rented this land to a tenant, will you give the net value of these crops to you on the crop basis method which has been testified to here. You are familiar with the crop method of renting?
A. Yes, sir.
Q. Will you give the value of these crops on these lands at the time *that* were destroyed, according to that basis?

Mr. Palmer: It is understood, of course, that all of this testimony that has been given, as well as that called for by this line of examination is objected to as not the proper measure of damages.

Mr. Pinkney: We understood your objection yesterday covered all this line of inquiry.

Q. What I am trying to get is, will you tell the Court what your loss would have been if you had this land farmed by a tenant on the usual method of renting lands in this locality?

A. Why, I presume it would have been one half of that.

2218 Q. That is the way land is usually rented—on the one half basis?

A. Yes, sir.

Q. That is to say, for instance, your loss on wheat that you have given—one half of the amount you have given would have gone to the tenant and the other half to you?

A. Yes, sir. In that case of course the tenant paid the expense.

Q. Then you figure it out and give it to us—what would have been your loss on those ten acres of wheat?

A. My loss would have been $90.

Q. On the wheat?

A. Yes, sir.

Q. Now will you give what the total of your loss would have been net under the rental basis value?

A. $1,020.

Q. Now, have you deducted from that amount, all expenses that you would have been put to to have produced these crops in the market for your share?

A. I haven't deducted half the thresh bill.

Q. Would you have been liable for that?

A. Yes, sir.

Q. Any other items?

A. No other items.

Q. Then deduct half the thresh bill and tell us what your net loss would be?

A. $46.50.

Q. Does that include all items?

A. All items of expense.

Q. That deducted from the figures previously given would

2219 leave your loss what?

A. $973.50.

Q. And I take it that the tenant would get the difference between $973.50 and $1,654 as his share of the crop?

A. He would.

Q. Mr. Taylor, prior to the date of these flood waters in 1915, what did you regard the fair market value of these lands?

A. $75 an acre.

Q. Since these flood waters came upon these lands what do you regard the fair market value of the flooded lands?

A. Well, there really is no sale for them at the present time. I

have tried at different times. I was taken sick a year ago and was discouraged and wanted to sell out, and I tried hard to unload mine at $50 and couldn't find any sale whatever.

Q. No market for it at all?

A. I offered to put in the entire farm with $6,000 worth of improvements on it and it is impossible to sell it.

Q. At any figure?

A. No.

Q. Now have you a general acquaintance with the lands in the Bois de Sioux valley embraced within the yellow shaded portion on the map now shown you known as Complainant's exhibit 1, in this case?

A. I think so. I have probably been over pretty nearly all of it.

Q. You were interrogated upon that subject by counsel for the defense when you were on the stand in St. Paul?

A. I think so.

2220 Q. And you testified concerning the general character and so forth of the land?

A. Yes, sir.

Q. Mr. Taylor, have you en-aged in any other business in connection with your farming operations?

A. I at one time helped to organize this National Bank here.

Q. I am referring now especially to the fact that you—if it is a fact—ran a threshing machine?

A. Yes, sir.

Q. For how many years?

A. Five or six years. Six years. I think we threshed a little for six falls.

Q. Can you state what years those were?

A. I think we commenced in 1912, and 1913, 1914, 1915, 1916, and 1917. I think the machine has been out and threshed a little every year.

Q. Did you thresh crops produced on those flooded lands during those different seasons?

A. I did.

Q. Or on lands within this flooded area?

A. I did.

Q. To what extent?

A. To some extent. I don't know as I can say just how much.

Q. What extent did you thresh each fall—about how many acres of grain did you thresh each fall of the different kinds of grain? Take wheat for instance, to start with? How many acres of wheat would you say you averaged each fall during the six years?

2221 A. In the shaded district, or do you mean everywhere, wherever the machine was run?

Q. I mean within this so-called overflowed area, and lands in the immediate vicinity.

Q. That is pretty hard for me to answer.

A. Can you answer it approximately correct as to lands included within this so called overflowed area?

A. Well, the first year in 1912 I think we threshed about 600 acres in these overflowed lands, in that shaded district.

Q. Of wheat lands?

A. Yes, sir.

Q. Now on lands immediately adjoining these overflowed lands how many acres of wheat did you thresh that fall as nearly as you can recollect?

A. I don't know. The machine was out twenty-eight days. I presume 1,800 acres total. I can't tell exactly.

Q. Well, that is your best recollection?

A. I am giving the best guess I know how.

Q. Well now with respect to oats?

A. Well, this was wheat and oats both.

Q. And barley and flax?

A. Yes. Not much flax but some.

Q. Did that also include barley and flax?

A. Yes.

Q. Then your judgment is that in the threshing season of 1912, you threshed approximately 1,800 acres of grain on lands lying within this overflowed district and immediately adjacent to it?

A. Yes, sir.

Q. What would you say as to the threshing you done the following fall in this same territory?

2222 A. Well, I presume about the same. We made nearly the same run the next year. We were out about the same length of time in 1913.

Q. Are you able to state, Mr. Taylor, about the yield of these different grains per acre that you threshed during the threshing season of 1912 and 1913, taking wheat first?

A. I think the wheat, if I remember right, ran from 15 to 22 bushels to the acre.

Q. Are you talking about the fall of 1912?

A. Yes, sir.

Q. And oats about what?

A. Oats all the way from 35 to 60 bushels, probably on an average the first fall of 45 bushels.

Q. Barley and flax?

A. Well, I presume 30 bushels for barley and flax about 11 or 12 bushels.

Q. Now what is regarded as a good yield per acre of flax?

A. 12 bushels is a good fair yield.

Q. And the barley?

A. Well, 40 bushels is a big yield. 35 bushels is a good fair yield of barley.

Q. Now what would you say as to the yield in 1913, on this same land?

A. There wasn't a great deal of difference.

Q. Now, Mr. Taylor, I wish you would tell the court whether or not any portion of your lands were flooded for the year 1916?

A. They were.

Q. To what extent?

2223 A. Well, there was more of it flooded in 1916 than in 1915.

Q. Give the flooded area in 1916 so far as you can in acres?

A. 140 acres in 1916.

Q. Where abouts?

A. On the west half of the west half of 4-129-47.

Q. To what extent, if any, on section 5?

A. Only a few places where the water—I think in the southeast corner of 5—I think there was one or two sloughs where the water reached across the road on to the other section.

Q. You say 140 acres were flooded?

A. Yes, sir.

Q. What crops, if any, did you produce on this 140 acres of flooded land in the year 1916?

A. We had about twenty acres of oats on the northwest corner.

Q. Did you harvest the oats?

A. We did.

Q. Were they flooded?

A. No, sir.

Q. Then, as I understand you, you produced twenty acres of oats?

A. Yes, sir.

Q. But not on this 140 acres?

A. No.

Q. My question was what crops you produced on this 140

2224 acres?

A. None whatever.

Q. Why not?

A. Well, there was water there and we couldn't work in the water.

Q. Did you sustain any loss on these lands by reason of these flood waters in 1916?

A. We did.

Q. Have you estimated what you- losses were?

A. I have.

Q. Will you state to the court what they were, taking the different kinds of crops on which you computed them?

A. Well, I had intended to sow 100 acres of wheat.

Q. What was the loss by reason of——

A. On the lands adjoining that that wasn't covered with water we threshed five bushel- per acre.

Q. Did you compute your loss as to 100 acres of wheat on the basis of five bushel- to the acre?

A. Yes, sir.

Q. What did you find it to be?

A. Well I found a net loss, after deducting all expense, of $345.

Q. On the 100 acres?

A. Yes, sir.

Q. Is that your net loss after deducting all expenses?

A. All expenses.

Q. That it would have been necessary to incur to put the crop on the market?

A. Yes, sir.

Q. Now that left forty acres of flooded territory. What was your loss on the remaining forty acres?

2225 A. I intended to sow that to oats, and on what oats we threshed, we threshed fifteen bushels per acre. Oats were worth at that time about sixty cents per bushel.

Q. In the market?

A. Yes, sir. There would be a total loss of $360. Then after the cost of seeding, harvesting, threshing and marketing—$152—it leaves a net loss of $208.

Q. That is net loss after deducting all expense of harvesting, threshing and marketing?

A. Yes, sir.

Q. That covers all of your lands that were flooded in the year 1916?

A. Yes, sir.

Q. Will you give the total of your losses on these lands for the year 1916?

A. $553.

Q. Now will you state to the court what would have been your losses on the crop rental method for the year 1916?

A. $505.50.

Q. Calling your attention to the year 1917, did you have any flood conditions down there in 1917?

A. Yes, sir.

Q. To what extent were your lands affected by these flood waters?

A. I think there was about ninety acres that we couldn't get on to and seed in seeding time.

Q. What was the rental value of that ninety acres to you for the year 1917?

A. I intended to sow that to wheat in 1917. We threshed on the lands which were not flooded ten bushels per acre.

2226 Q. What would have been the rental value of the ninety acres in 1917 on the basis of a wheat crop on that if it had not been flooded, with a yield of ten bushel- per acre?

A. It would have brought a total amount of $1,845.

Q. Is that after deducting all the expenses of seeding, harvesting, threshing and marketing?

A. No, the cost of plowing, seeding, harvesting, threshing and marketing, $685.

Q. What would be your net total rental value to you for these ninety acres in 1917?

A. $900.

Q. Now will you compute the total loss for this ninety acres of land for the year 1917?

A. $1,160. I haven't got that right the total rented loss is $550. I had to furnish the seed.

Q. The rental value loss?

A. Yes, $550.

Mr. Pinkney:

Q. Mr. Taylor, did these flood waters damage any of the buildings, trees or any other property on your land?

A. No, the buildings are on the other quarter, most of them.

Q. Did those flood waters have any effect upon the arability of these lands, that is, the facility with which they can be farmed and cropped and cultivated?

A. I think so to some extent.

Q. What would be your judgment of the expense per acre in restoring these lands to the condition in which they were prior to the time the flood waters came upon them?

2227 A. It cost about $1 an acre more to plow the ground than it would otherwise. Than it would—the chances are there will have to be a disk put on there and have to have more work to work it up and get it into condition, much more than it would otherwise. I presume it would cost $1.50 an acre.

Q. To restore them?

A. Yes, sir, put them in proper condition.

Q. And your damages in that regard on these flooded lands would be $1.50 an acre for 140 acres?

A. Yes, sir.

Q. Mr. Taylor, are you acquainted with the premises described as the west half of the west half section 9, 129, 47, known as the Burgess land?

A. I am.

Q. Where does that land lie with relation to the land owned by you?

A. Right south of my east quarter.

Q. Right across the road?

A. Right across the section line, yes, sir.

Q. How long have you known those lands?

A. Since 1880.

Q. How long have they been cultivated, to your knowledge, crops produced on them?

A. Well, now that is a little hard.

Q. Well, approximately how long?

A. Oh probably 30 years, maybe a little longer.

Q. Do you know whether or not those lands were flooded by those same waters in the years 1915 and 1916 and 1917?

A. The most of it in 1915 and all of it in 1916.

Q. And how about 1917?

2228 A. 1917, I don't think it was possible to plow any of the land or sow any crop there.

Q. On account of what?

A. On account of the extreme wet in the spring.

Q. Due to these flood waters?

A. Due to these flood waters, yes, sir.

Q. Do you know whether any crops were produced on these lands for the year 1915?

A. Yes, there was oats on the north eighty and wheat on the south eighty, I believe.

Q. That is, they were sown?

A. Yes, sir, sown there.

Q. Eighty acres of wheat and 80 acres of oats?

A. Yes, sir.

Q. By the way, do you know who owns that?

A. Mr. Burgess.

Q. Do you know whether he farms it himself or rents it?

A. He rents it, I believe.

Q. Mr. Taylor, do you know whether or not the crops that were growing on those lands in the year 1915 were harvested?

A. There was a little strip of the oats harvested but I don't think any of the wheat.

Q. Do you know what the condition, the seeming promise of the crop was, at the time the flood waters came on it in 1915?

A. I think so.

Q. Tell the court what condition and shape the crops were in at that time?

2229 A. The oats were very nice. I would presume those oats would have been good for 60 bushels to the acre.

Q. That is the eighty?

A. The eighty, the wheat was about a two-thirds stand, about 15 bushels to the acre that year, that would be my judgment.

Q. You were right there and right across the road?

A. Yes, sir.

Q. Would that be true as to the 80 acres?

A. Yes, sir.

Q. What was the yield per acre of wheat and oats on lands of a similar character in that vicinity, lands that were not flooded in that year?

A. Oats, lots of oats that year went as high as 60 and some of them 70. We threshed a piece for Mr. Swanson that went 70 and would have weighed out more than that and we threshed lots of wheat that went all the way from 20 to 25.

Q. On lands of a similar character?

A. Why yes, of a similar character except the water didn't get on them.

Q. We are talking about lands that were not affected by the water and lands of a similar character.

A. Yes, sir, lands of a similar character.

Q. You produced wheat and oats on your lands across the road?

A. Yes, sir.

Q. What yield did you get from that?

A. I got 70 bushels oats on what we got threshed.

Q. And some wheat?

2230 A. I put in the yield of wheat 18 bushels, we had some wheat on the other quarter further away that did better 22 bushels.

Q. How far away was that from this land?

A. 80 rods.

Q. Land of the same quality and character?
A. Yes, sir.
Q. But was not flooded?
A. Not flooded and weren't near the water.
Q. What in your judgment would have been the rental value or what in your judgment was the value of those crops growing on Mr. Burgess' land at the time they were destroyed by those flood waters? Have you computed that?
A. I have not.
Q. Your judgment is, as I understand, the wheat would have averaged 15 bushels to the acre and the oats 60?
A. Yes, sir.
Q. On 80 acres of each?
A. On 80 acres of each.
Q. Of course, you had a knowledge of the condition of these lands in the year- 1916 and 1917?
A. Yes, sir.
Q. Were these lands overflowed during those years?
A. Entirely covered in 1916.
Q. Was there any crop produced on them at all?
A. None whatever.
Q. Now with respect to the year 1917?
A. 1917, it was grown up to cat-tails. I don't think a person could have got in with a plow to have plowed in there and got a crop in any season. Later on of course, the ground could
2231 have been plowed.
Q. What do you mean by later on, the late summer?
A. Yes, sir, too late to sow crops.
Q. So that no portion of the quarter section had any crop planted on it in the years 1916 or 1917, is that true?
A. That is true.
Q. Mr. Taylor, I now show you a photograph marked Complainant's Exhibit 30. I will ask you to state of you know where and when that photograph was taken?
A. I do not.
Q. What does it represent?
A. It represents cat-tails, I should think.
Q. Do you know on whose lands?
A. No, I do not know on whose land.
Q. You have spoken of the cat-tails growth on the Burgess land. I will ask you to state of they were of a similar character to those, of the kind and character generally speaking of those represented in Complainants' Exhibit 30 now shown you?
A. Yes, sir, those look natural.
Q. Do they look like the growth of cat-tails that you have referred to that grew on the Burgess land in the years 1916 and 1917?
A. They do.
Q. And that growth covered the entire quarter section?
A. I think so.
Q. Both years?
A. Yes, sir.

Mr. Pinkney: We offer this on connection with the testimony of this witness (referring to Exhibit 30).

2232 Q. You spoke of their harvesting some oats on the Burgess land in the harvest season of 1915. About how many acres were there harvested there?

A. I should presume 10 acres, I don't think any more than that.

Q. At least 10 acres of oats; had they been affected in any way by the flood waters, had the flood waters been up on these lands at all?

A. No- on those 10 acres, no, sir.

Q. Do you know what the yield was per acre?

A. No sir, I didn't thresh them and I wasn't there at the time, I never knew.

Mr. Bronson:

Q. Without repeating or covering ground that the testimony in your examination at St. Paul, I want to ask you a few questions concerning general conditions on this territory that was flooded, as you have heretofore referred to and to which your attention has been called as designated on the map, on Complainant's Exhibit 1; and in that regard, I want to ask you the general question whether or not you are familiar with the lands, generally speaking in the county of Richland?

A. I have been around the county some, yes, sir.

Q. You appear to be one of the old residents of Richland having been here some 36 or 37 years?

A. 37 years, I believe.

Q. And in that period of residence, I presume you have become more or less familiar with farming conditions and farming operations an dthe fertility of the soil in the county of Richland?

A. I have.

2233 Q. Now, I want to ask you to state in making comparison on lands in the county of Richland, the general value, nature and character and fertility of the soils and of the lands of the territory that was flooded in the years 1915 and 1916 as compared with other lands in the county of Richland, North Dakota?

A. It compares very favorably, I think, with other lands, some of the richest and most fertile lands in the valley right there in that shaded district.

Q. And with reference to crop production, I will ask you the general question, inasmuch as it appears from the evidence in this case that you own one quarter of land that was not within the flooded area and another quarter of land that was within the flooded area, to state from your own knowledge and observation the productivity for raising highly tilled and cultivated crops on this land within the flooded portion as compared with the land without it or anywhere in the county of Richland?

A. You take it for a period — years, following one year with another until 1915 I never could see a great deal of difference and it was

always a guess to me which quarter of land was worth the most to me to raise crops on.

Q. My attention particularly was called to the propounding of the question that I last asked you by reason of the fact that in your testimony, I believe, you stated that in the year 1915 some wheat on the east quarter went 18 bushels per acre, whereas some wheat apparently on your west quarter went about 22 bushels per acre as if perhaps the west quarter was that more productive than the east quarter. What is your observation and knowledge with reference to the productivity of the two quarters during the time you
2234 have farmed them?

A. I can't see a great deal of difference. I have seen a series of years or a period of years where the east quarter was much better than the west, always raised better corn and oats than the west quarter unless the river comes up and covers it. The year 1915 the west quarter happened to be—we had 60 acres of corn there the year before—happened to be in a little better shape of cultivation. Then again the water coming so near these lands where this crop was harvested, don't you see, hurt this crop, therefore we harvested 18 bushels an acre adjoining these lands that were flooded. On the other land, of course, the water didn't come so near and thereby had a chance for a better crop and they were also in a little better state of cultivation that year, thereby making the difference.

Q. With reference to those lands in your immediate vicinity, that means your own lands, that means lands of Mr. Burgess and the lands right in your immediate vicinity west *of* the Bois de Sioux river, in view of some questions propounded by the counsel for the State of Minnesota to some witnesses that have been produced by the State of North Dakota which tend apparently to elicit the information or testimony that these lands are of a marshy, swampy character, I want to ask you the general question whether or not your lands or the lands of Mr. Burgess or the lands in your immediate vicinity are of a marshy, swampy character?

A. They are if you get close to the river; but no, my lands or Mr. Burgess' nor lands in that immediate vicinity are not marshy or swampy in character. You can go further east and get almost to the river bed and you will find them in this condition but not these lands, you understand.

2235 Q. Generally speaking, then, from a point westerly of your land and then down to the Bois de Sioux is it fair and proper to state that there is a gradual slope to the river?

A. There is.

Q. You have already testified in St. Paul to the conditions that occurred in the year 1881 as being a high-water season, and the condition that occurred in the year 1897 also as being a high-water season; I want to ask you whether or not in the year 1897 crops were produced and raised and harvested and threshed on your lands and those lands in the immediate vicinity of you?

A. They were.

Q. I want to ask you to state also whether or not these lands of

yours and the lands that you have described as belonging to Mr. Burgess were ever subjected to a condition in the entire number of years that you have lived here where they were flooded to the extent and in the manner that they were in the years 1915 and 1916 so as to be incapable of being used for any farming operations?

A. They are not.

Cross-examination.

By Mr. Palmer:

Q. You came to this part of the country in 1880?

A. Yes, sir.

Q. You took the land in that year?

A. Yes, sir.

Q. What crop did you put in on the west half of the west half of section 4 in the spring of 1881?

2236 A. None whatever.

Q. What crop was put in on this Burgess land, the west half of the west half of section 9, in the spring of 1881?

A. None, lands were not broke.

Q. What crop was put in on any land whatever in this territory that has been spoken of as the flooded territory in the year 1881?

A. There weren't any lands broken up in the country hardly in 1881.

Q. Then I understand you to say there was no crop whatever put in on any part of this land in 1881?

A. There was hay cut on my land on the west half of the west half of 4 in 1881, wild hay.

Q. How much?

A. There probably was 100 tons.

Q. Where?

A. On the north end of the quarter.

Q. On the north end of the quarter?

A. Yes, sir. On the north eighty, I think, I put up that hay. I cut some for myself and for my father and some for a neighbor.

Q. Put up any hay on the south eighty of that quarter section?

A. I don't think so. I think I could have but I didn't need it, there was lots of hay in the country.

Q. You didn't try to?

A. I didn't try to, no, sir.

Q. Who owns the land immediately — of you, between your land and the river?

A. Mr. Gajer.

2237 Q. What condition was that land in the spring of 1881?

A. It was covered with water early in the spring.

Q. What condition was your land in in the spring of 1881?

A. Covered with water that is the quarter in 4, the west half of the west half of 4.

Q. Was it covered with water to the same extent that it was in 1916?

A. About the same.

Q. Was it covered with water to about the same extent that it was in 1916 also in the spring of 1897?

A. About the same, there wasn't a great deal of difference.

Q. Was it covered with water to about that same extent in the spring of 1888?

A. No, sir.

Q. Did it have some water on it that spring?

A. In 1888?

Q. Yes.

A. I don't think so.

Q. Was it covered with water again in the spring of 1906?

A. I think Mr. Gajer's land east of mine was covered with water but the water didn't come up onto mine, I don't think.

Q. Any part of the year?

A. No part of the year, I don't believe, but I think pretty close to mine if I remember right.

Q. In 1908 was your land in section 4 covered with water at any time?

2238 A. No, sir.

Q. No water on it at all?

A. I don't think so.

Q. Was Mr. Gajer's land, between your land and the river, covered with water to the same extent in 1915 and 1916 that your land was?

A. More so in 1915 and more so in 1916 because it was entirely covered and there was a portion of mine what was out from under water.

Q. None whatever of his land?

A. Not east of mine.

Q. None east of yours was out of water in 1916?

A. None, that is right.

Q. And none in 1915?

A. None in 1915.

Q. There was an arm or branch of the Bois de Sioux river that spreads out to the westerly and comes pretty well up on the land of Mr. Gajer, is there not?

A. Well it comes up there some.

Q. Runs across his land?

A. Yes, sir.

Q. In ordinary springs does the water run in that arm of the river?

A. No, I don't think so.

Q. None in there at all?

A. No.

Q. There is——

A. Water might stay there, that is it is a slough there might a little water remain there when the snow goes off.

2239 Q. Does that slough extend entirely across Mr. Gajer's land?

A. I don't think so.

Q. How large a slough is it?

A. It might be—it is really a flat, that is really what it is. It is a little flat in there and extends up from the river. You cross that slough and you go into a dry point the river running on one side and this slough on the other.

Q. You cross that slough and you come to a sort of an island in between that and the river?

A. Yes, sir, you might call it an island or peninsula.

Q. And when the slough across his land is filled with water, then this intervening land between that and the river becomes an island, doesn't it?

A. You can go around the slough, I believe, by making south, so it is not an entire island.

Q. At what point to the south does it end?

A. Why, I think you drive from the south end of the section line, I think you drive 50 or 60 rods, and you can drive around the end of the slough.

Q. You think there is ceases?

A. I think so.

Q. Did you ever make any very close examination?

A. I have been probably in there a hundred times. I am an old hunter and I have been all up and down the river, as far as that is concerned I have traveled that river many times.

Q. On the Crothers land to the south of section 4 there is no slough passing across it?

2240 A. There is a slough passing from east to west on the Crothers land.

Q. From east to west?

A. Yes, sir, runs up near the west side, commences near the west side.

Q. Where does it end?

A. And extends east.

Q. How far?

A. Clear to the river, nearly to the river anyway.

Q. There is across your land in both section 4 and 5 and extending on westerly, a creek or ravine, is there not?

A. Ravine, yes, sir.

Q. The road passes between the two quarters of your land?

A. Yes, sir.

Q. Is there a bridge across the ravine there?

A. There is.

Q. How large a bridge?

A. 20 foot wide, I think.

Q. What is the clear space below the span, I mean below the floor?

A. I should presume 16 feet.

Q. How deep?

A. About 3½ feet, the bridge is raised up from the level of the road.

Q. So that it leaves a space of about 16 feet wide and 3½ feet deep below the bridge?

A. Yes.

Q. That bridge has always been there or some bridge?

A. That bridge has been there probably for 25 years or some other bridge.

2241 Q. Is it adequate to accommodate the flow of water from the west without backing up?

A. Well, considered so. I have throught sometime it ought to be a little larger.

Q. Why?

A. Well, when the coulée breaks up there is quite a flow of water coming from the west.

Q. So much so that this space under the bridge is hardly able to accommodate it?

A. I have seen that happen, yes, sir, particularly when that was blocked up with snow.

Q. And then the water from that coulée backs up upon your land in section 5?

A. No.

Q. Where does it go?

A. It goes east. I have seen the coulée run over in front of my house and run south but it don't back up on section 5.

Q. Where is your house?

A. My house is on section 5 but it runs down the road ditch.

Q. Which way?

A. South and then runs across the road into the east—on 4.

Q. Then the reason it doesn't back up is because it is ditched to the south?

A. There isn't much of a ditch there. It is a little ditch but the water naturally goes that way. There is a nice fall, that coulée comes down there pretty swift.

Q. How much of a fall is there?

A. I should presume 6 or 8 feet to a mile.

2242 Q. You think there is 6 to 8 feet to a mile?

A. Yes, sir.

Q. Clear down where it outlets?

A. From the section line between 5 and 6 to the section line between 4 and 5 I think there is about an 8 foot fall.

Q. How much of a fall is there from the west line of section 4 over to the river?

A. I presume there is a 4 foot fall, maybe more.

Q. Is the fall less across the west half of four? Is there a space there there is very little fall?

A. No, sir.

Q. There is not?

A. No, sir.

Q. Is there a bridge across this ravine also at the railroad tract?

A. There is.

Q. How large a bridge is that?
A. About the same size, I guess possibly a little longer.
Q. Is that sufficient to accommodate the flow of the water?
A. Yes, sir.
Q. In the year 1915, you say, you put your crop in all right in the spring?
A. Yes, sir.
Q. Through the months of May, June, and July, there was quite excessive rainfall?
A. Ordinary rainfall.
Q. Was there anything more than ordinary rainfall?
A. I don't think so.

2243 Q. And nothing unusual in the rainfall in the months of May, June and July, 1915?
A. No, sir.
Q. Nothing at all?
A. No, sir
Q. And nothing unusual in the rainfall in the months of May, June, July and August 1916, either?
A. I think so.
Q. You do?
A. Yes, sir, I do. I think we had more rainfall that year than usual.
Q. Do you think you had any more than usual in 1915?
A. No, sir, I don't think; I have seen years wet just as much.
Q. What years?
A. 1892 for one, we had more rainfall.
Q. What months?
A. Well, through the months of May and June.
Q. 1914, you had a good deal of rainfall in June?
A. Well, not any more than ordinary in 1914.
Q. Nothing unusual in the rainfall in June 1914, Mr. Taylor?
A. I don't think so. I had charge of the roads of the entire township that year, I had no trouble taking care of them.
Q. The records have been introduced in evidence showing there was a precipitation in that month of 10.4 inches the highest ever known in a single month in the whole history of this territory; you didn't observe any such thing?

2244 Mr. Pinkney: We object to that question as not being a correct statement.

A. We might have had one or two good rains, we had them lots of times.

Mr. Palmer:

Q. You recall several months you had as high a precipitation as 10 inches?

Mr. Bronson: Objected to as argumentative.

A. I don't know as I could mention several months now, Mr. Palmer, I believe I have seen as much rain as we had in 1914.

Mr. Palmer:

Q. Was there any water on the land in section 4 in 1914?
A. No, sir.
Q. Any water in this ravine?
A. Well, I don't think there was much, if any. *Q.* I wouldn't swear there wasn't any.
Q. Was there some water in it in 1915?
A. Yes, sir, not to mention in the spring though.
Q. There was later in the season?
A. There was later in the season.
Q. Where did that come from?
A. That backed up from the river.
Q. There was no water ran in from the west?
A. Yes, sir, there was water ran in there, there was a little.
Q. From the west?
A. Yes, sir.
Q. What part of 1915 did the water run there?
A. What part?
Q. Yes.
2245 A. I think it was in July.
Q. In July?
A. I think so——
Q. Where did that water come from?
A. —although I wouldn't swear there was any in July because none of that flat land in the west was flooded at that time. I don't know as there was any water there except on the east quarter that backed up from the river after we got the rise from the river.
Q. You say there were none of the flat lands to the west of your that were flooded in 1915?
A. I don't think so.
Q. Where are those flat lands?
A. We have a great many flat lands, flat lands on the west of Blackmer here.
Q. I asked you about the flat lands west of your land?
A. Well, when you get on section 1 this ditch that runs into this coulie runs through, it is very flat.
Q. Then those flat lands over in section 1 have been ditched into this coulie that runs across your land?
A. Yes, sir.
Q. When were they so ditched?
A. I couldn't say as to the year.
Q. Prior to 1915?
A. Yes, sir, 8 or 10 years ago.
Q. How large an area has been ditched out and drained into this coulie?
A. There is a ditch 5 or 6 miles long, not a very large ditch.
2246 Q. Do you know any more definitely about the size of it?
A. About the size of the ditch?
Q. Yes, sir.

A. I presume that ditch is 6 foot deep and probably 16 foot wide on top.

Q. And some 5 or 6 miles long?

A. 5 or 6 miles.

Q. Drains quite an extensive territory?

A. Well, it is supposed to, that is what they put it in there for.

Q. And I apprehend it was put in there for the purpose of draining wet territory, swampy lands?

A. They have some flat lands in there, yes, sir.

Q. And you think in 1915 there were at least some waters that came through this ravine across your land?

A. Well, I presume there was a little at some time during the summer but not much.

Q. Then there would have been some natural rise in the river during the summer of 1915, I apprehend?

A. Not necessarily.

Q. You don't think there was sufficient rainfall to bring about any perceptible rise in the Bois de Sioux river that season?

A. Not enough to back up on the lands much, no.

Q. And in 1916 there was nothing in the rainfall to cause any perceptible rise at all?

A. Yes, sir, I really think so. I think there was enough rainfall to cause some rise in the river.

Q. And the river being high, this water coming in from
2247 the west would naturally back up some on your land, wouldn't it, Mr. Taylor, under any circumstances?

A. Yes, sir, when the river gets high enough.

Q. So that some of the water that flooded your land in both 1915 and 1916 must have come from the ditching operations to the west into this ravine?

A. I don't consider when there is water in that ravine that my land is flooded.

Q. How deep is that ravine across your land?

A. Not very deep.

Q. About how deep?

A. Perhaps in places 2½ feet, other places not so deep.

Q. How wide?

A. Perhaps 20 feet.

Q. 20 feet wide and you think the greatest depth is 2½ feet?

A. I don't think there is a place where it is over 2½ feet deep.

Q. The water that is ditched into that and comes down on your land does not affect your land any?

A. I have a pasture on the west and also one on the east that this runs through, this coulie runs through.

Q. How long have you had that pasture there?

A. Well, the one on the east, I just built it this year. The one on the west has been there several years.

Q. You cultivated the land clear up to the sides of the ravine?

A. Plowed clear through, it has all been plowed up different times.

2248 Q. How recently has it been plowed up and cultivated since?

A. Not for the last 4 or 5 years. That is a portion of the hay land or has been a portion of the hay land on the east and then a pasture on the west.

Q. Have there been other ditching operations, except this ditch 5 or 6 miles long that you speak of, into this ravine?

Mr. Pinkney: If the Court please, we object to this line of questioning, it is not proper cross-examination, we asked him nothing about these things on our direct examination.

A. Not that I know of.

Mr. Palmer:

Q. Is this ditch that you speak of into this ravine westerly of your lands a public ditch?

A. It is a county ditch.

Q. It is a county ditch?

A. Yes, sir.

Q. Laid out and established and constructed under the drainage laws of the State of North Dakota?

A. I think so.

Q. Are there any other ravines or water courses coming into this flooded area from the west until you get down to the south line of North Dakota?

A. There is some waters that come across after coming from Traverse Lake and spread out down south there, you know, and then comes across and comes into those ravines and then comes down but otherwise from that I don't know of any.

2249 Q. There are some three different outlets of Traverse Lake across this flooded territory?

A. Yes, sir.

Q. In addition to the Bois de Sioux river, aren't there?

A. I think so.

Q. Ordinary years, does the water run through those outlets?

A. No, they are dry.

Q. Was there water in those years of excessive snow or rain?

A. In the spring, yes, sir.

Q. You know of no other ravines or water courses coming in then from the west down to the state line?

A. Down to the state line?

Q. Yes.

A. I know of one there.

Q. That is on section 30?

A. Well, I wouldn't say just what section.

Q. About a mile north of the state line, a mile and a half?

A. I think so, a small ravine that comes down there.

Q. Some ditching operations have been carried on into that?

A. No, sir, I don't think so.

Q. Does that also drain some flat land further west?

A. I don't think there is much water runs through there, since the ditch was put in it has cut the water off and put it down.

Q. Cut the water off and thrown it across your land?
2250 A. Yes, sir. If I remember right, I objected to that on the start; should have served an injunction and stopped it but I didn't do it.
Q. I expect your objection was that they were bringing water down into your land that didn't naturally come there?
A. That was my objection, yes, sir.
Q. Did you sell any oats in the field in 1915?
A. I did not.
Q. You know of any being sold?
A. No, sir.
Q. Did you sell any wheat in the field in July, 1915?
A. In the field?
Q. Yes.
A. I delivered it at the elevator; no, I guess not, in July.
Q. Do you know of any being sold?
A. In August, I did.
Q. Did you know of any being sold in the field in August, 1915?
A. No, I did not.
Q. Do you know of any hay being sold on the stump in July 1915?
A. Hay was sold here in Fairmount in 1915, in July, 1915.
Q. That was on a wagon?
A. Yes, sir.
Q. I am asking you about hay on the stump.
A. No, sir.
Q. It has been testified here that the usual rental for hay land in 1915 was $3 an acre; do you think that is about correct?
2251 A. I don't think that is enough for tame hay.
Q. Your price is $10?
A. My price is $10.
Q. Did you sell any that year for $10?
A. I did not because we couldn't cut it.
Q. Did you ever sell any hay on the stump in your life for $10 an acre?
A. I never did.
Q. Or anybody else?
A. Not that I know of.
Q. Did you ever know anyone to sell corn in the field in July?
A. No, sir.
Q. You never bought or sold any?
A. Never did.
Q. Nor knew of anybody buying any or selling any?
A. Not in July.
Q. What farms, unimproved by way of building but under cultivation, rented for cash rental in this locality in the year 1916?
A. I don't know of any rented at cash rent.
Q. You don't know of any?
A. Not unimproved, where there was no buildings.
Q. What was such land as I have just described rented for at cash rental in the year 1917?
A. I don't know of any that was rented for cash rent in 1917.

Q. Your method of arriving at your damages in 1915 is to
2252 take what you estimate would have been the number of bushels per acre of the various crops and deduct therefore the cost of harvesting, threshing and marketing, isn't it?

A. That is it.

Q. And in estimating your loss for 1916 you estimated that you might have had a certain number of acres of wheat, that it might have gone a number of bushels to the acre, that you might have received a certain price per bushel?

A. I made that estimate from the lands adjoining that land; the yield that we got, the price we got for the wheat that was grown thereon, that is the way I made that estimate.

Q. And likewise in 1917 you figured——

A. Likewise, yes, sir.

Q. The same?

A. The same thing.

Q. And in making that estimate, I think you figured on the rental of one-half of the corn?

A. Yes, sir.

Q. That is the customary way of putting in corn land on rental?

A. It is a great many times, yes, sir.

Q. The owner furnishes the land and the seed——

A. In some instances.

Q. And the tenant whatever else is necessary?

A. In other instances, there is a cash rent paid.

Q. How much?

A. That varies from $2.50 to $4 an acre.

Q. But sometimes the tenant gives the owner one half of the entire crop of corn?

A. That has been done, yes, sir.

2253 Q. Is it customary?

A. Well, I don't know in that case.

Q. That is the way you figure it?

A. That is the way I figured it, yes, sir. I keep some stock here in town and generally get a portion of the corn.

Q. This crop of 1915, did that belong to you?

A. Yes, sir.

Q. I understood you to say something about the land being rented to your son?

A. I don't think so. I said there was no contract drawn, my son simply lived there on the place and I lived in town.

Q. You hire your son to carry on the farming operations?

A. You might say so, yes, sir.

Q. And you figured that on the same basis for 1916 and 1917?

A. Same basis, yes, sir.

Q. Do I understand you to say there was 90 acres of this land of which you had no use whatever in 1917?

A. I think that is right.

Q. That land is all plowed at the present time?

A. That land is all plowed at the present time.

Q. Ready for crop next year?

A. Yes, sir.

Q. You speak of your inability to sell your land. Were there any sales of real estate in this vicinity in the season of 1916?

A. I don't think so.

2254 Q. Have there been any in 1917?

A. Don't believe there has.

Q. Was there not a——

A. Still there might have been as far as that is concerned I don't know as to that.

Q. Was there not a practical failure of crops in this entire locality in the year 1916, Mr. Taylor?

A. There was a partial failure, yes, sir, not an entire failure but a partial failure.

Q. What proportion of the usual wheat crop was raised in this section that year?

A. Well, nearly one-half of the usual crop, perhaps, not quite, perhaps two-fifths.

Q. And of the corn?

A. Well, there was some good corn raised here in 1916, some pieces of good corn here.

Q. What I wanted to direct your attention to was in general the proportionate part of an average crop?

A. Outside of the flooded area I think that there was four fifths of a crop of corn.

Q. And of barley and oats?

A. Oats was probably half crop, barley about the same.

Q. That applies to the whole of Richland County?

A. Well I wasn't all, over the county but that applies to this vicinity, Fairmount township. I run a machine.

Q. You travelled with the machine yourself?

A. Yes, sir.

Q. Each of these years that you have mentioned, beginning with 1912?

2255 A. Not entirely one year. One year I was on crutches for eight months and wasn't with the machine all the while but I was out to see pretty nearly every day.

Q. Ever do any threshing for Mr. Anderson on Section 20?

A. I never did.

Q. Or on any of the land on Section 21?

A. Never.

Q. Or any of the land in section 28?

Mr. Bronson: You mean 127, 47?

Mr. Palmer: Yes, sir.

A. No, sir, my machine never went south to amount to anything.

Q. Do you know who did that threshing in there?

A. Mr. Stelton, I think his machine has been in there. Mr. William Stelton has threshed this grain; I don't know just what year but I think his machine has run in that vicinity.

Q. I have already interrogated you *are* to the contribution toward the expense of bringing this action. I want to ask you now if you

have given these statements of your damages with the expectation that you will be reimbursed in these amounts in case of recovery by the state — North Dakota again- the State of Minnesota?

A. I expect to, yes, sir. I really had the loss and am entitled to it. I was advised by my attorney to tell the truth, which I have tried to do.

Redirect examination.

By Mr. Bronson:

2256 Q. This ditch you speak about, Mr. Taylor, was about the year 1900?

A. Not as far back as that.

Q. Can you give the date?

A. I can't give the date, no, but not that far back. I presume that ditch has been in there 11 or 12 years.

Q. Any waters that came down this ditch to bother you in 1915?

A. No.

Q. Or 1916?

A. Well, there was some water came down there in 1916.

Q. At the time they had the flood?

A. Early in the spring, the coulée ran over in front of my house and the water made south and then crossed the road as I have mentioned before.

Q. But these flood waters you have been talking about came from where, that did the damage to your land?

A. Came from the south, presumably from Traverse Lake.

Q. Those are the flood waters you have been talking about?

A. Yes, sir.

Q. The ones that did the damage to your land?

A. Yes, sir.

Q. I want to ask you one further question. I asked you about the quality of the land, comparing the lands in this flooded territory with other lands in Richland County. I want to ask you another question with reference to the value of the lands, the market value of the lands in your vicinity and your lands that lay

2257 right around that vicinity, in comparison with the market price of lands in the rest of Richland county?

A. Well, I think the lands have sold as high in this vicinity as anywhere in Richland county.

Q. You haven't any memorandum that would give the exact date of this ditch?

A. No, sir, I have not.

Q. You are stating it approximately from your recollection?

A. Yes, sir, as near as I can remember.

2258 EARL BURGESS, being sworn in behalf of complainant, testified as follows.

Examined by Mr. Pinkney:

Q. Have you been sworn, Mr. Burgess?
A. I have.
Q. Where do you live?
A. Peoria County, Illinois.
A. What is your age?
A. 43.
Q. What is you- occupation?
A. Farming.
Q. Do you own any land in Fairmount township, Richland County, North Dakota?
A. I do.
Q. Are you the owner of the west half of the west half of 9, 129, 47, Richland County?
A. Yes, sir.
Q. How long have you owned it?
A. Sonce 1909, I purchased it in 1909.
Q. What time of the year?
A. October.
Q. Are those farm lands?
A. Yes, sir.
Q. Have you cultivated them yourself since you owned them?
A. No, sir, I have not.
Q. Any year since you owned them?
A. No, sir.
Q. Have they been cultivated?
A. They have.
2259 Q. By tenants?
A. Tenants.
Q. What kind of crops have been produced on them during the years since you have owned them?
A. Well, wheat, oats and some corn and barley.
Q. What portion of your half section has been cropped during the time you have owned it, all of it?
A. No, sir.
Q. Was your land all broken up when you got it?
A. Yes, sir.
Q. Has it any buildings or fences on it?
A. No, sir.
Q. And you say it was all broken up when you got it?
A. Yes, sir.
Q. Did you have any crops on those lands in the year 1915?
A. I had some.
Q. Are you able to state what kind of crops there were upon the land in 1915?
A. I think there was——
Q. Do you know?
A. Seeded 80 acres of wheat, north half of oats.

Q. What do you mean, how many acres of oats?
A. 80 acres.
Q. 80 acres of oats and 80 acres of wheat?
A. Yes, sir.
Q. How many acres have you got in the whole tract?
A. 160.
Q. Then it was all seeded to wheat and oats in 1915?
2260 A. Yes, sir.
Q. Do you know whether your crops were harvested in the year 1915?
A. I have a report of it.
Q. From whom?
A. H. B. Taylor.
Q. Was he your agent having it in charge?
A. I and he between us.
Q. Was your crop harvested in the year 1915?
A. There was 10 acres of oats.
Q. None of the wheat?
A. No wheat.
Q. Were your lands or any portion of them flooded these lands, in 1915?
A. They were.
Q. To what extent were they flooded?
A. The south eighty was all flooded.
Q. And how much of the north eighty?
A. I suppose about all but that 10 acres of oats.
Q. That would be 70 acres in all?
A. Yes, sir.
Q. In other words, there were 150 acres of your quarter section flooded in 1915?
A. Yes, sir.
Q. What effect did it have on this 70 acres of oats and this 80 acres of wheat on your land in 1915?
A. It was so wet we couldn't cut it.
Q. Drowned out by the flood?
A. Yes, sir.
Q. Was any portion of that 80 acres of wheat harvested?
2261 A. Not that I know of.
Q. And only 10 acres of the oats?
A. 10 acres of the oats.
Q. Have you computed the value of that 80 acres of wheat as it stood on your lands at the time they were flooded, the summer of 1915? Answer yes or no.
A. No, I don't.
Q. You haven't computed it?
A. No, sir.
Q. Will you compute it during the noon recess so as to be able to give it?
A. Yes, sir.
Q. Have you computed the value of your oats crop for the same season that was drowned out?

A. I haven't figured that.
Q. Will you do that during the noon hour and be prepared to testify?
A. Yes, sir.

Mr. Palmer:

Q. Did the witness see this crop?
A. No, I didn't see it in 1915.

(Recess taken until 1:15 p. m. In afternoon session witness was recalled and gave the following testimony:)

Mr. Pinkney:

Q. Have you computed the rental value of your quarter section of land that was flooded in the year 1915 for such year?
A. I have.
Q. What losses did you sustain by reason of the flood waters in 1915 on that quarter section in dollars and cents, the net loss?
2262 A. 80 acres of wheat.
Q. What was your loss on the wheat? Your share of it?

Mr. Palmer: It may be understood that this is objected to on the ground that there is no foundation laid and the witness has not shown himself competent to testify.

A. $600.95.
Mr. Pinkney: That was your share of the 80 acres of wheat?
A. Yes, sir.
Q. And in reaching those figures what yield per acre did you estimate it upon, how many bushels to the acre?
A. Fifteen bushels to the acre.
Q. At what price did you compute your losses, that is, price of wheat?
A. Net loss?
Q. No-, at what price did you figure your share of the crop for the year 1915, the wheat crop?
A. $1.35.
Q. Have you computed your losses on your share of the oats crop?
A. 80 acres of oats.
Q. What was the value of your share of the oats crop for the year of 1915?
A. One half of same, 2400 bushels.
Q. 30 bushels an acre?
A. 60.
Q. 2400 bushels was your share?
A. Yes, sir, 45c a bushel.
Q. How much does that amount to?
2263 A. $1,080.
Q. Is that your share?
A. Yes, sir.

Q. That is your entire crop on the entire quarter section for the year 1915?

A. Yes, sir.

Q. Now, have you computed your losses on this same land for the year 1916, occasioned by those flood waters?

A. I have.

Q. What crop did you figure on in 1916?

A. 80 acres of wheat, 5 bushels to the acre, one half of same, 200 bushels.

Q. At what price per bushel?

A. $1.35 per bushel.

Q. How much does that make?

A. $270.

Q. How many bushels of oats did you figure on putting in that year?

A. 80 acres of oats, 15 bushel- per acre, 11,200 bushels.

Y. One half of which would be yours?

A. Yes, sir, one half of same, 600 bushels, at 60c.

Q. That would be how much?

A. $360.

Q. That comprises your share of the crop on the entire quarter section for the year 1916?

A. Yes, sir.

Q. Have you computed your losses on this piece of land occasioned by those flood waters, for the year 1917?

A. I have.

2264 Q. How did you compute it?

A. 40 acres of summer fallow, 120 acres of wheat, 10 bushels per acre, 1,200 bushels, one half of same, 600 bushels.

Q. At what price?

A. $2.05.

Q. That would be $1,230, wouldn't it?

A. Yes, sir.

Q. In reaching these final figures that you have given, did you deduct from the figures arrived at for the year 1915, the expense of harvesting, threshing and marketing your share?

A. I did, threshing bill on same is $34.20.

Q. That was for wheat?

A. For the wheat. Net loss of $535.80.

Q. I thought you gave me $600.95 as your loss on the wheat crop of 1915? Didn't you deduct your expense of harvesting?

A. I had not *not* deducted this.

Q. What do you want to make it, how much?

A. $535.80.

Q. Is that the entire expense of harvesting, threshing and marketing?

A. Threshing.

Q. That is all of the expense you would have been put to to get your wheat crop marketed for 1915?

A. Yes, sir.

Q. Leaving you a net loss of $535.80?

A. Yes, sir.

Q. How about the oats for the same year you gave me, $1,080; was that exclusive of all expenses of harvesting, threshing
2265 and marketing?

A. The threshing bill on same, $96.

Q. That would make it $994, wouldn't it?

A. $984.

Q. Was there any oats harvested on your farm that year, do you know anything about it?

A. I don't know only what Mr. Taylor told me.

Q. If there was 10 acres of the oats harvested, then it would leave only 70 acres, wouldn't it? You would have been entitled to one half of that 10 acres, wouldn't you, if there was 10 acres harvested, isn't that true?

A. Yes, sir.

Q. Did you get any part of it? Is it true or not that those 10 acres were harvested from what you learned?

A. Yes, sir, there was.

Q. Instead of figuring on a basis of 80 acres of oats, it *would* to be figured on a basis of 70 acres at 60 bushels to the acre, making it 4,200 bushels, one-half of which belongs to you, isn't that true?

A. That is true.

Q. 4,200 bushels or 2,100 bushels would have been your share, wouldn't it? At forty five cents a bushel that would amount to $945; does that exclude or include the cost of threshing?

A. Just the threshing.

Q. How much was the threshing on your share of the oats that year?

A. One-half threshing, $96.

Q. One-half of $96?

A. Threshing bill on same $96.

2266 Q. You had 70 acres of oats that year that yielded 60 bushels to the acre didn't you?

A. Yes, sir.

Q. Your share of that as owner would be 2,100 bushels, wouldn't it, one half of the total, isn't that true?

A. That ain't the way I have it here.

Q. You have it figured on the basis of 80 acres?

A. Yes, sir.

Q. You shouldn't have figured it on that basis because 10 acres was harvested, you only had 70 to figure, isn't that true?

A. Yes, sir.

Q. You would be entitled to 2,100 bushels of oats, on 70 acres, and at what price per bushel, 45¢?

A. 45¢.

Q. $945. How much would the expense of threshing be on that 2,100 bushels—4¢ a bushel,—then you deduct the expense of threshing from that wouldn't you, Mr. Burgess?

A. Yes, sir.

Q. That would be $38 wouldn't —?

A. $38.00.

Q. $38 from $945 would be $907; then that really would be your loss on the oat crops for 1915?

A. Yes, sir.

Q. Have you deducted from your losses for the year 1916, your expense of threshing, your share of it?

A. One half same, 200 bushels of wheat, $1.35 a bushel.

Q. Did you deduct the expense of threshing from that gross amount you gave, $270? Did you deduct your expense of
2267 threshing 200 bushels, 6¢ a bushel would be twelve times 200 bushels. Did you deduct that or add it in?

A. I deducted that.

Q. That left your net loss on your wheat crop in 1915—was $270 on your wheat crop for that year?

A. Yes, sir.

Q. Did you deduct your expense of threshing of one half of your oats crop in 1916 in the final figures you have given?

A. $80, one half of same, 600 bushels, seed for same 80¢.

Q. I am not talking about the seed, I am talking about your threshing.

A. Threshing 600 bushels, $24.

Q. There was 1,200 bushels raised and you got those and you deducted your share of the threshing, did you?

A. Left me 360 bushels.

Q. $360?

A. $360.

Q. Is that exclusive of inclusive of expenses of threshing?

A. Yes, sir, it is.

Q. Exclusive or inclusive? Do you know what inclusive means? Let me put it this way, does that include the expense of threshing your share or is it less your expense of threshing?

A. Less.

Q. Then your net loss on your oat crop for 1916, was $360, was it?

A. Yes, sir.

2268 Q. Did you deduct your expense of threshing the wheat produced on this 80 acres of wheat land for the year 1917, in the figures you have given as to your loss? What were the deductions you made for 1917, for threshing your share of the wheat crop, the crop you would have grown, how many bushels of wheat would you have had as your share in 1917, on your 120 acres?

A. One half of same would be 600 bushels.

Q. And computed at $2.05 a bushel?

A. Yes, sir.

Q. Then you didn't deduct the expense of threshing, did you? It should be $36 less than the amount that you have given, for the expense of threshing?

A. Threshing the same.

Q. It would be six times 600 bushels, 6¢ on 600 bushels, which would make $36.

A. Yes, sir.

Q. That would leave you $1,194 as your net loss on your wheat crop in 1917?

A. Yes, sir.
Q. That is all the crop in 1917, 120 acres of wheat?
A. Yes, sir.
Q. In arriving at the crop production on these lands for 1916 and 1917, how did you get at that?
A. For 1917?
Q. 1916 and 1917 both.
A. It wasn't fit to go on and do any plowing.
Q. Did you ascertain what the crop production, what the yield was of the land around you as to oats and wheat for the years
2269 1916 and 1917, lands that were not flooded?
A. Lands not flooded was——
Q. I say did you learn that fact by inquiry?
A. No, I did not.
Q. How did you get the number of bushels per acre on which you computed your damage? You figured your wheat as I understand it for 1916 at 5 bushels to the acre, didn't you?
A. Yes, sir, 5 bushels.
Q. And why did you take 5 bushels to the acre as the yield?
A. Well, that was an average crop for that year.
Q. On lands near yours that were not affected by those floods?
A. Yes, sir.
Q. You learned of the fact, did you?
A. Certainly.
Q. And then took that figure?
A. And then took that figure.
Q. Is that true as to your oat crop in 1916?
A. It was.
Q. In 1917, you took the yield of wheat per acre at 10 bushels did you not?
A. Yes, sir.
Q. Why did you take the yield?
A. Well, others there made that much.
Q. Is that what ascertained to have the average yield per acre on other land not affected by those flood wa*y*ers of that year?
A. Yes, sir.
2270 Q. As I understand it, Mr. Burgess, the tenant on your land for these three years was to deliver these grains in market for you without expense for delivery, was he?
A. Yes, sir.
Q. You were to pay one half of the expense of harvesting, and threshing?
A. Yes, sir.
Q. And such expenses have all been deducted by you ha*be* they in these final figures you have testified to, is that correct?
A. Yes, sir, it is.
Q. Did you deduct from those figures the value of seed in each case as to wheat and oats?
A. I just deducted what the amount of,—the bill of threshing and no deduction for twine or nothing.
Q. I say, did you deduct the value of the seed of the oats and wheat in 1916 and 1917? You furnished the seed, didn't you?

A. Yes, sir.
Q. Both years?
A. Yes, sir.
Q. Did you deduct that in arriving at what your losses were on these lands in the years 1916 and 1917, before you testified as to these net losses, the amount of the net losses?
A. All I deducted was seed wheat——
Q. That is what I am asking about.
A. For same, threshing.
Q. You deducted the bushels of wheat for seed, did you, for both years?
A. Both years.
2271 Q. Did you deduct the bushels of oats for seed both years?
A. Yes, sir.

Mr. Bronson:

Q. What is your deduction, Mr. Burgess, for seed in 1916, wheat and oats? Read the deductions for 1916, all of them, that you have computed, then we will find out whether you have deducted them or not?
A. All I have down here is, put down the amount of acres, 5 bushels to the acre, 400 bushels, one-half of same 200 bushels, $1.35 a bushel, seed wheat on 80 acres, 100 bushels, $1.25, threshing bill on two hundred bushels 12¢ a bushel.
Q. What have you put on the oats?
A. On oats, 15 bushels per acre, 1,200, for one-half of same 600 bushels, 60¢ a bushel, $360 seed for same $80.
Q. Threshing?
A. Threshing 600 bushels, $24.
Q. So your 1916 figures may be summarized as follows: 80 acres of wheat averaged 5 bushels per acre, one-half of same 200 bushels at $1.35, gross, $270. 80 acres of oats averaged 15 bushels, one-half of same 1,200 bushels at 60¢ gross, $360. Total, $630. Is that correct?
A. Yes, sir.
Q. From that the following deductions have been computed by you; Seed wheat $125, threshing $12, seed oats $80, threshing $24, total $141?
A. Yes, sir.
Q. So your net would be secured then by deducting from $630, $141, which would make $489, net rental value of the lands
2272 in question during the years 1916. Now, 1917 Seed wheat for the 120 acres, what have you got?
A. Seed wheat for same $375.
Q. How many bushels, at what price?
A. $2.05.
Q. Have you just the total, $375 for seed wheat 1917?
A. Yes, sir.
Q. What is your threshing?
A. Thresh bill $36.

Q. That would be $411 total deduction 1917?
A. Yes, sir.
Q. Then the summary is for 1917: 40 acres of summer fallow, no returns; 120 acres of wheat averaged 10 bushels, raised 1,200 bushels, one-half of same, 600 bushels, at $2.05 makes $1,230, from which you have deducted seed wheat, $375, threshing $36 gross deduction $411; net rental returns for the year 1917 $819; is that the way you figured it?
A. Yes, sir.
Q. In 1915, you have stated in the evidence 80 acres of wheat, averaged 15 bushels, price $1.35, gross $695; 70 acres oats at 60 bushels per acre, gross 4,200, one-half of same 2,100, at 45¢ gross $945, total would be secured by adding those two together, wouldn't it?
A. Yes, sir.
Q. Would make gross $1,545.95; what are your deductions for 1915, threshing how much?
A. Threshing bill on same is $96.
Q. Your net then for 1915, is $1,449.95 with $96 deducted for threshing?

(No answer.)

2273 Cross-examination.

By Mr. Palmer:

Q. When did you buy this land?
A. In 1909.
Q. What date in 1909?
A. As to that I couldn't say. It was October, I don't know just the date.
Q. What did you pay for it?
A. Paid $45 per acre.
Q. Did you pay that in cash or was it a trade?
A. I paid $1,800 cash.
Q. How did you pay the balance?
A. Five years payment, installment.
Q. Did you trade anything in on the purchase price?
A. No, sir.
Q. Whom did you buy the land from?
A. Mr. Sauter.
Q. Before purchasing it did you talk with Mr. Sauter about it?
A. I did not.
Q. Do you know how long Mr. Sauter had had it?
A. No, I do not.
Q. Do you know whether Mr. Sauter had ever farmed it himself?
A. As to that I don't know.
Q. Did you make any inquiry of anyone as to the market value of the land when you bought it?
A. No, sir.

Q. Did you make any inquiry as to the market value of any of the land in that vicinity before you bought this?

2274 A. No, I did not.

Q. Did you examine the land itself before you bought it?

A. Not any more than right along the road.

Q. You made no examination of the soil?

A. I did not.

Q. You made no examination as to whether it was reached by overflow from the river?

A. I did not.

Q. It has never had any buildings upon it?

A. No, sir.

Q. And it lay within about a mile and a quarter of Blackmer station?

A. Yes.

Q. And within three miles of the town of Fairmount?

A. It did.

Q. Did it have any fence upon it?

A. No fences.

Q. Did you make inquiry as to how many years it had been cultivated prior to the time you bought it?

A. I did not, I don't think.

Q. Was any of it broken up when you bought it in 1909?

A. It was.

Q. How much of it?

A. The whole quarter.

Q. The whole quarter?

A. Yes, sir.

Q. Had it been in crop that year?

A. It was.

Q. What crop?

2275 A. Wheat, and I think oats.

Q. Do you know what crop was raised that year, how many bushels of wheat to the acre?

A. I don't know as I can remember now.

Q. Do you know how many bushels of oats were raised per acre that year?

A. No, I don't.

Q. What did you do with the land the year following, 1910?

A. I farmed it.

Q. Did you rent it?

A. Yes, sir.

Q. On what terms?

A. Half.

Q. What return did you get from it that year?

A. All told, 1,268 bushels.

Q. I mean your share in dollars and cents?

A. $631.90.

Q. 1910 was a very dry year, wasn't it, in this locality, Mr. Burgess?

A. I don't know.

Q. Were you out here?

A. Not at the time.
Q. What were your returns in 1911, in dollars and cents?
A. $382.98.
Q. You had it rented upon shares that year?
A. Yes, sir.
Q. One half?
A. One half.
2276 Q. 1911, were you out here?
A. No, sir.
Q. You don't know, you had no information as to whether it was a wet or dry year?
A. No, sir, I do not.
Q. What were you- returns in 1912?
A. $708.20.
Q. 1912, was a year of most excellent yield of crops in this locality, wasn't it?
A. As far as I know it was.
Q. What were your returns in 1913?
A. $596.05.
Q. Did you have it rented on halves that year?
A. I did.
Q. And that was a good crop year in this locality, according to your understanding?
A. Yes, sir.
Q. 1914, what were your returns?
A. $303.
Q. Did you get any returns at all from these 10 acres in 1915? You got a part of this 10 acres, did you not, in 1915?
A. No, sir.
Q. Then the very highest that you ever received by way of returns from this land was in 1912, and then you received $708.00, Mr. Burgess?
A. I did.
Q. Where is your home?
A. Illinois, Peoria County.
Q. How long have you lived there?
A. All my life.
2277 Q. You have been then all your life a resident and citizen of the State of Illinois and you are such at this time?
A. I am.
Q. Have you made a contribution towards the expense of carrying on this suit by the State of North Dakota?
A. I have.
Q. And has that been with the understanding and expectation that you will receive the damages that you have put in here if recovery is had by the State of North Dakota against the State of Minnesota?
A. It is.
Q. Now, you want to collect in this case for the year 1915, $1,449.95, don't you?
A. Yes, sir.
Q. That is more than double the highest returns that you ever got for any year from this land isn't it?

A. It is.

Q. You think it is fair that you recover from the state of Minnesota more than double what you ever received any other year, do you?

A. I do not.

Q. Why then have you put in damages here of more than double the highest returns you ever received from any other year for the year 1915?

A. Because it was overflowed and damaged.

Q. Your average returns from this land appear to be about $524 a year?

A. Yes, sir.

Q. Which is a little over $3 an acre, is that correct?

2278 A. Correct.

Q. Now, you have between $9 and $10 an acre for 1915; that is what you want, is it?

A. Yes, sir.

Q. 1916, was a very poor year, wasn't it, in this locality?

A. It was.

Q. And you have your damages on this land a little over $3 an acre $489.?

A. Yes, sir.

Q. Do you know of anyone receiving in this locality on share rent rentals to that amount in this year?

A. No, sir, not as I know of.

Q. For the year 1917, you want $819, which is more than one hundred dollars more than you received at the highest year before; do you think that is correct?

A. Correct.

Q. Do you know of any land that has been rented in this locality for the year 1917 for $5 an acre?

A. I have.

Q. You know of land in this locality that has been rented this past season at $5 an acre, cash rent do you?

A. No, I don't.

Q. That is what you want for this?

A. Yes, sir.

Q. So far as you are concerned, Mr. Burgess, it appears to be a most excellent thing to have this land overflowed all of the time from these overflowings, wouldn't it?

A. You say all the time?

Q. Yes. Don't you think it would?

2279 A. Not my best authority.

Q. Not your best opinion you mean?

A. Yes, sir.

Q. Did you see any part whatever of the crop of 1015, on this land in question?

A. I did not.

Q. Did you see any crops in this locality in the year 1916?

A. I did not.

Q. Or in 1917?

A. No, sir.
Q. Have you rented this land for next year?
A. I guess I have.
Q. Crop rent or cash rent?
A. Cash, I guess.
Q. At cash rent; and how much per acre, cash rent?
A. A man that pays the taxes, I guess that would be cash, same as cash rent? It is rented out for a man that pays taxes, a man that pays taxes on it.
Q. You mean you have let someone have it for next year for paying the taxes on it?
A. Yes, sir.
Q. And is that all, that you are to receive in rentals from it?
A. Yes, sir.
Q. For next year, is the payment of the taxes?
A. Yes, sir.

Redirect examination.

By Mr. Bronson:

Q. Mr. Burgess, in presenting your claim here on lands
2280 that you own in the State of North Dakota for losses that have been sustained on account of those flood waters you expected, have you not, in so presenting it, the State of North Dakota to protect you in your property rights in this State?
A. Yes, sir.
Q. And you stated this claim to this court to the best of your information as you have been able to determine it of the damages that the land has sustained by reason of the flood waters?
A. Yes, sir.
Mr. Pinkney: Have you seen your lands recently?
A. I saw them yesterday.
Q. Tell the court what the condition of the land was as you observed it yesterday. What shape is it in?
A. Shape I seen it in now is mostly cat-tails.
Q. How extensive are the cat-tails over your land?
A. Pretty much all over.
Q. All over the whole quarter section?
A. The whole quarter.
Q. And how extensive is the growth?
A. Two and one half or three feet high, I should judge.
Q. No part of it has been plowed this fall?
A. No, sir, it has not.

2281 Pursuant to adjournment, hearing resumed at 1:30 p. m. Nov. 7, 1917, with all parties present.

ANDREW RYDELL, having been called as a witness on behalf of the complainant was duly sworn and testified as follows:

Direct examination.

By Mr. Bronson:

Q. State your residence, and age?
A. White Rock, South Dakota, forty-five.
Q. How long have you lived in White Rock, South Dakota?
A. I have lived there for twelve years.
Q. 1905 to 1917?
A. Yes, sir.
Q. You may state whether or not before that time you farmed in Roberts county, South Dakota?
A. Yes, sir.
Q. From 1896 to 1905?
A. Yes, sir.
Q. Are you the owner of any land in Fairmount township?
A. Yes, sir, the east half of the northwest quarter the west half of the northeast quarter and lots 1, 2, 3 and 4.
Q. Section 9-129-47, Fairmount township, Richland county, North Dakota?
A. Yes, sir.
Q. When did you buy this land?
A. 1914.
2282 Q. In the fall?
A. Yes, sir.
Q. Have you owned it ever since?
A. Yes, sir.
Q. What did you pay for it at that time?
A. I paid $50 an acre.
Q. How much was broke up on the land at that time?
A. 130 acres.
Q. Any buildings on it?
A. Yes, sir.
Q. Describe them?
A. There is a house 16 x 26 with 14 foot posts, and an addition to it 12 x 14, ten foot posts. There is one granary 16 x 26, that is granary and barn together; and one chicken coop, I think about 8 x 12.
Q. Who was living there when you bought these premises?
A. Mr. Caruthers.
Q. With his family?
A. He was a bachelor.
Q. State whether or not in the spring of 1915 you put a crop in on this land?
A. Yes, sir.

Q. State the crop that you did sow on these premises?
A. Fifty acres of wheat, 54 acres of oats, 26 acres of corn and some potatoes and garden.
Q. How many acres of pasture at that time were there on the premises?
A. There was about four acres when I got there in the
2283 spring.
Q. And then besides these crops that were sown the balance of the land was used for what purpose in 1915? It was in what kind of crop, if you call it a crop, hay, pasture or what?
A. Pasture and hay land.
Q. How much pasture?
A. I had eight acres. I made the pasture bigger from four to eight acres.
Q. And how much balance in hay land?
A. In hay land 160 acres.
Q. This land contained about 300 acres altogether?
A. Yes, sir.
Q. Does this land run up to the Bois de Sioux river?
A. Yes.
Q. What portion of that land is adjacent to the Bois de Sioux river?
A. The government lots.
Q. The 130 acres you mentioned which was broken was that adjacent to the Bois de Sioux or away from it?
A. That is on the quarter.
Q. State whether or not this crop was put in in seasonable condition?
A. Yes, sir, it was.
Q. And what shape and promise it had prior to the introduction of flood waters on it?
A. No, flood waters on that.
Q. What shape was it in prior to the time the flood waters did come on?
A. The finest kind of shape.
2284 Q. Describe in what shape the oats and wheat and corn was?
A. I never seen any better or nicer oats, and my neighbors can testify the same.
Q. How about the wheat?
A. The same.
Q. The corn?
A. The corn was a little better than the average.
Q. About when did the flood waters, if at all, start to come on this land? I mean on the land that was sown to wheat, oats and corn?
A. Well, I seen the raise on the water from the middle of April. It started to raise and come in on the corner of the quarter and then it kept on rising all the time.
Q. What time did the water start to come onto this ground that was into wheat, oats and corn?

A. Well, that started to come in, I would judge, in May. There was some of it, the lowest part flooded a little bit then.

Q. And then it continued right up through until what time when it got the highest?

A. Well, it was some time between the 10th and 20th of July.

Q. When did this land in wheat, oats and corn become overflowed entirely?

A. It was in July.

Q. And to what state of maturity had the cereal crops, the wheat, oats and corn then advanced?

A. The oats was headed out in nice shape and so was the wheat, and the corn had reached a height of about four feet fully.

2285 Q. Now what happened to this wheat, oats and corn? Did it mature and did you harvest it or not?

A. No, sir.

Q. Was it or was it not destroyed by these flood waters?

A. Yes, sir.

Q. Have you computed the value for the year 1915 of these cereal crops? The wheat, oats and corn, as you have described at the time they were destroyed?

A. Yes, sir.

Q. Will you state it?

A. Do you want the whole amount for all the years or the one year?

Q. 1915. Take the wheat, oats and corn, and go down the line with it.

A. Fifty acres of wheat, 22 bushels per acre, amounts to 1,100 bushel-, value $1.15 per bushel, amount $1,265.00 expense cutting and shocking, $1.00 per acre, makes $50; threshing and hauling ten cents per bushel, amount $110; twine bill, two pounds per acre, 12½ cents a pound, $12.50; grain at the elevator, all expense taken out would bring $1,092.50.

Q. The oats?

A. Loss of oat crop, 1915, amount of acres, 54, at sixty bushel an acre, amounted to 3,240 bushel, at 47 cents a bushel, $1,522.80; cutting and shocking $1.00 per acre, $54; threshing bill at six cents a bushel, $194; twine bill, three pounds to the acre, 162 pounds, 12½ cents a pound, amounts to $20.25; amount of expense $268.65; grain at the elevator would bring clear $1,254.15.

2286 Q. Corn crop, 1915, twenty-six acres, $15 an acre; $2.00 cutting and shocking. $390 gross, and net $338.

Q. Have you stated all the items now?

A. No, sir.

Q. For the year 1915, as far as the oats, wheat and corn are concerned?

A. Yes, sir.

Q. Now the net loss as *as* you have stated it then is $1,092.50 for the wheat, $1,254.15 for the oats and $338 for the corn?

A. Yes, sir.

Q. Now in making your estimate of value of the crop of 1915,

far as the wheat is concerned, from whence did you get the aver-
e of the yield of 22 bushel?
A. I didn't have any on that land that I could get it from, but
got it from my neighbors and asked them if their grain what went
er from 22, 25 to 27 looked better.
Q. Land alongside of yours?
A. Yes, sir.
Q. Of similar kind and character?
A. Yes, sir.
Q. The grain being of similar stand?
A. Yes, sir.
Q. Put in about the same way?
A. Yes, sir.
Q. And your value of $1.15 how did you ascertain that?
A. Because when I had to buy grain that is the price I had to
ay for it and that is about what the price was in the time that a
person would *see* grain, between $1.05 and $1.25.
287 Q. And in making your estimate concerning the oats how
did you arrive at the yield of sixty bushel- per acre?
A. Why I asked my neighbors that had oats that didn't look
ny better, and they said it must have went anyhow sixty if not
eventy bushel-.
Q. On similar land?
A. Yes, sir.
Q. Similar stand of oats?
A. Yes, sir.
Q. On land adjacent to you?
A. Yes, sir.
Q. And how did you ascertain the price that you fixed here at
orty-seven cents?
A. That is the price at the elevator.
Q. That fall?
A. Yes, sir.
Q. Now how did you arrive at the value of $15 for the 26 acres
f corn?
A. Why I bought corn and had to pay a little bit better than that
or it.
Q. Pay for what?
A. I had to pay a little bit better than $15 for corn of that kind
o get it.
Q. You mean corn standing in the field?
A. Yes, sir.
Q. Per acre?
A. Yes, sir.
Q. Then you valued it, from your experience as a farmer, this
orn as you say and put it in at $15 per acre?
A. Yes, sir.
Q. And deducted therefrom the cost of cutting and shocking it?
A. Yes, sir.

2288 Q. By which you arrived at your net value of the corn at the time it was destroyed, $338?

A. Yes, sir.

Q. Now besides those items for loss for the year 1915, state about your hay land, the value of the crop of hay at the time it was destroyed by those flood conditions.

A. 160 acres of hay land worth $3 an acre; $480; 8 acres of pasture valued at $3 an acre, $24.

Q. These items then are respectively the value, as I understand it of your hay land and pasture?

A. Yes, sir.

Q. And the hay on it at the time it was destroyed?

A. Yes, sir.

Q. And you figure on this 8 acres of pasture the grasses there were of the value of $3 per acre?

A. Yes, sir.

Q. How did you arrive at those figures, $3 per acre for pasture and $3 per acre for hay land?

A. Because it is selling at that all over. Every man had to pay that for it if he wants it, and that is the cheapest price a man can get it for.

Q. Besides these items you have mentioned was there occasioned in 1915 any damage to your buildings?

A. Yes, sir.

Q. By reason of these flood waters?

A. Yes, sir.

Q. State those damages?

A. Well, the water standing around the building destroyed the foundation around it, a newly made foundation of cement and destroyed that foundation pretty bad. Also the cellar.

2289 The water was standing in that, and the water eat under the foundation so it ain't at present safe without quite a lot of repairing on it.

Q. What is the cost of repairing that and restoring it to the former condition?

A. I haven't figured just exactly on the buildings alone. I also had the fence destroyed—quite a little destruction—not all of it. Some posts and some wires that was rusted and destroyed, and also a lot of apple trees, like 24 apple trees, 12 cherry trees, 6 plum trees, 100 cotton-woods, 1 dozen raspberries, 2 dozen currents, 300 strawberry plants, also some potatoes.

Q. That is what were situated in the 2 acres around near the house, around the buildings?

A. Yes, sir.

Q. What were the damages as you figured them to these items?

A. I figured the damage on all of that $500. I got one orchard like it at home I will not take $1,500 for about the same.

Q. Now just to what extent did you have fences and posts around there?

A. Well, I had enough for eight acres. I guess it must be about

9 hundred pounds of wire in that, that is barbed wire, then I had about 60 rods of woven wire.

Q. How far did the water come up, as far as the house was concerned in 1915?

A. It didn't get in the house. It came up about 14 inches on the foundation.

Q. Now have you stated all the items of your damage and loss sustained, including the value of the crops and damage to
2290 your buildings for the year 1915, with the deduction proper to be made?

A. Yes, sir, I think I have.

Q. How deep did it get over any part of your land, that water, in 1915?

A. In 1915, I think it went from about 18 inches. That is the lowest.

Q. Now in 1916, were these lands flooded again?

A. The water never got off from them.

Q. Did it remain there during 1916?

A. Yes, sir.

Q. Were or were you not able to crop or use this land in 1916?

A. I never could go there without a boat in 1916.

Q. And have you computed the rental value of the crops for the year 1916 covering these premises that were flooded?

A. Yes, sir.

Q. Will you state them?

A. Lost on the wheat crop, 1916, 50 acres of wheat—I put it like I had it—which I would be liable to have—the same amount of that grain every year—I put 50 acres of wheat, at 6 bushels per acre, 300 bushels. $1.50 a bushel, would amount to $450; one half of the crop would bring $225; expense of the seed would be $57.50; twine $6.25, threshing and hauling $30; the expense would be $93.75; wheat net at the elevator $131.25.

Oat crop 1916, 24 acres, 20 bushels an acre 1080 bushels; one half crop, 540 bushels, 50¢ a bushel. I guess, $270. Expense seed, $50.76; twine $6.25, threshing $27.00, $84 expense, net $185.99.

2291 Corn crop, 1916, 26 acres at $17 per acre, $442; one half of it, $221; cutting and shocking, $2 per acre, net $195.

Pasture and hay lands, same as before, $24 for 8 acres of pasture, and hay land, 160 acres $480.

Q. Now Mr. Rydell, you are familiar with the ordinary method of renting lands on the croppers' division plan you have heard described in the evidence here by the other witnesses?

A. Yes, sir.

Q. And in making your computation for the year, 1916 you may state whether or not you figured on the cereal crops that you would have put in in the year 1916?

A. Yes, sir.

Q. And stating this average, six for wheat and twenty for oats, you took the average for that season?

A. Yes, sir.

Q. Raised on land of similar character and kind in your locality?

A. Yes, sir.

Q. And likewise as to the price, was it market price you have taken?

A. Yes, sir.

Q. At marketing time?

A. Yes, sir.

Q. It seems that you figured $17 for corn; where did you get that figure?

A. Why, it is worth that, the value of the corn was worth a dollar a bushel for the corn and the fodder in an acre is worth $10.

Q. You figured it under the seasonable condition that
2292 existed in 1916?

A. Yes, sir.

Q. Now in assuming what would be the rental value of these premises for the year 1916, you have computed on this rental plan the total production on these premises for the year 1916, and apparently have taken out of one half of the returns computed by you for that year the expense of threshing, harvesting and marketing have you not?

A. Yes, sir, I have taken it out.

Q. Well, as I understand it, under the testimony as given by some of the witnesses under the rental crop plan the landlord furnishes the seed and one half of the twine bill and one half of the thresh bill. Is that correct as you undertsand it?

A. Why, in some cases.

Q. Have you made any deductions here for the seed that you would have furnished?

A. Not on the corn.

Q. Have you on the wheat and oats?

A. Yes, sir.

Q. And your deduction for expense was one half of the thresh, twine bill and so forth?

A. Yes, sir.

Q. And why not on the corn?

A. Why on the corn, the seed of the corn I have got but all the other expense is deducted from it.

Q. Well, if you had put these premises into corn you would have been compelled to furnish the seed for that corn?

A. Yes, sir.

2293 Q. What would that have been worth?

A. For 26 acres it would have been worth pretty close to $10.

Q. Now give the aggregate of this rental value, as you have computed it for the year 1916, the net wheat, oats and corn.

A. Wheat, $131.25, oats $185.99, corn $196——

Q. Give the net corn with the seed deducted?

A. $186. Pasture $24, hay $480, total, $1,007.24.

Q. Was $3 the rental value per acre of the hay and pasture land in 1916?

A. Yes, sir.

Q. In 1917, was this land put into crop?

A. No, sir.

Q. Why?
A. Because it was flooded with water.
Q. In a wet condition?
A. Yes, sir.
Q. You were unable to crop it at all or use it during 1917?
A. No, sir.
Q. And have you made a like computation for 1917 that you did make for 1916?
A. Yes, sir.
Q. State it?
A. Wheat crop, 1917, 50 acres, 10 bushel- an acre, would be 500 bushel-, $2.05 a bushel, $1,025, one half of the crop would be $512.50; expense threshing, twine, seed, $106; net $406.50. Oats loss 1917, 54 acres, 20 bushels an acre, 1,080 bushels at 55¢ a bushel, $594, one half of the crop is $297; expense of twine
2294 bill, $12; seed $54, threshing $32.40; total expense $98.40; net $198.60. Corn crop, net $195, 26 acre- at $17 an acre.
Q. Have you deducted the seed for the corn?
A. No, that would be $185.
Q. How about the pasture and hay land?
A. That would be the same, $24 for the pasture, $480 for the hay land, $504.
Q. Now give me the aggregate of the items for the year 1917, net?
A. Wheat $406.50; oats $198.60; hay and pasture, $504; corn $185; total $1,294.10.
Q. You computed this 1917 crop on the same basis that you did the 1916?
A. Yes, sir.
Q. Now, Mr. Rydell, what shape is this land in at the present time?
A. Why it is dry at the present time.
Q. What shape is the soil in—what kind of growth on it, if any?
A. Cat-tails.
Q. What effect have these flood waters had on the land with reference to any growth or anything of that kind on them? Do I understand you to say the land is grown up to cat tails?
A. Yes, sir.

Complainant's Exhibit 31 marked for identification.

Q. I show you Complainant's Exhibit *Exhibit* 31 and ask you to state what it represents.
A. That is a picture of my place just exactly.
2295 Q. You may state whether or not that represents some of the growths that have been on those premises this season?
A. Yes, sir.
Q. The white house shown in this picture is the building described in the evidence as your house?
A. Yes, sir.
Q. What is the cost of restoring these lands so flooded in the years 1915 and 1916 to their former condition of arability or ability to

plow and raise crops, by reason of these flood conditions having existed upon them?

A. At the very least $5 an acre.

Q. You have stated you paid $50 per acre for this land?

A. Yes, sir.

Q. State whether or not that was the market value of that land prior to the time the flood waters came upon it?

A. I think I bought it very cheap.

Q. Would you say or wouldn't you say that $50 an acre was as least the market value?

A. Yes, sir.

Q. That it was the least market value you would place on such lands?

A. Yes, sir.

Q. You may state what is the market value of these lands that you have described in the evidence after these flood conditions?

A. There ain't no market value at present.

Q. In 1916, the flood waters that came on these lands, were they greater or less than in 1915.

2296 A. Greater.

Q. To what extent greater?

A. Why, I think the water was at least ten inches higher in 1916 than in 1915.

Q. To what extent, if at all, did the waters come up on the house or the foundation more than they did in 1915?

A. Yes, sir, they came up higher.

Q. You may state whether or not the buildings or any part of them on these premises in the years 1915 and 1916 were occupied?

A. No.

Q. And you may state whether or not before the flood conditions you made preparations to move to these premises?

A. Yes, sir.

Q. Why didn't you occupy them and live in these buildings?

A. I couldn't get there any way than with a boat.

Q. Where were you compelled to live?

A. I had to live in town.

Q. What town?

A. White Rock, South Dakota.

Q. And what has been your business since these flood conditions came on this land?

A. Renting land.

Q. As a tenant?

A. Yes, sir.

Q. Where did you rent such land?

A. In North Dakota five miles northwest of White Rock,

2297 Q. For what years?

A. 1916 and 1917.

Q. Have you farmed most of your life?

A. Yes, most of my life.

Q. Where?

A. In Roberts County, South Dakota, for nine years.

Q. And in North Dakota the places you have stated?
A. Yes, sir.
Q. And anywhere else?
A. In Renville County, Minnesota.
Q. What is the character of this soil on these premises that you have described for raising cereal crops and producing cereal crops on the same?
A. The very best I ever seen.

Mr. Bronson: We offer in evidence as part of the examination of this witness Exhibit 31.

Cross-examination.

By Mr. Palmer:

Q. How much land did you rent west of White Rock?
A. 160 acres.
Q. What rent did you pay for it?
A. I rented on a half basis.
Q. The owner furnished the seed?
A. Yes, sir.
Q. And paid half the threshing and half of the twine?
A. No, he didn't pay half the twine bill and not the threshing bill.
Q. He didn't pay any twine or threshing bill.
A. No, sir.
2298 Q. You gave him half the corn too, did you?
A. No, I didn't because I wanted all the corn.
Q. Well, you wanted all the rest of the crop, but you didn't get it?
A. No, I didn't want more than my share.
Q. How did you rent the corn ground?
A. $3 an acre.
Q. You paid $3 an acre cash rent for that corn ground?
A. Yes, sir.
Q. In 1916?
A. Yes, sir.
Q. And in 1917?
A. Yes, sir.
Q. Did you rent any hay ground and pasture ground in 1916 and 1917?
A. Yes, sir.
Q. What did you pay for that?
A. $3 an acre.
Q. Now you charge here in your damage for corn ground in 1916 on your farm, $17 an acre?
A. Yes, sir.
Q. That is about six times as much as you paid for corn ground?
A. Yes, sir.
Q. I take it that you want to recover those damages from the State of Minnesota.

A. Why, it is different land.
Q. And a different claim, too, isn't it?
A. Yes, sir, but when you take a poor piece of land and do the work to manure and fix it up for corn why you get it
2299 cheaper.
Q. You expect, I take it, to recover these damages from the State of Minnesota—these damages you have mentoned?
A. Yes, sir.
Q. And you have contributed towards the expense of maintaining this suit have you?
A. Yes, sir.
Q. And with the understanding that if a recovery is had by the State of North Dakota that it will appropriate to you the amount of your damages you have stated here?
A. Yes, sir.
Q. You are not a citizen or a resident of the State of North Dakota?
A. Not at the present, just now.
Q. Have you ever been a resident and citizen of the State of North Dakota in your life?
A. I lived here this summer.
Q. Where?
A. Out here five miles northwest of White Rock.
Q. On this place?
A. No, on that rented place.
Q. In North Dakota?
A. Yes, sir.
Q. Is this land that you rented five miles northwest of White Rock in North Dakota?
A. Yes, sir, three miles north and three miles west.
Q. And you have lived there in 1916 and 1917?
A. Part of the time.
Q. When did you move there?
2300 A. I moved my family up there in May.
Q. What May?
A. 1917.
Q. You moved your family onto that farm five miles northwest of White Rock in North Dakota?
A. Yes, sir.
Q. And in May 1917?
A. Yes, sir.
Q. That was after the commencement of this suit?
A. Yes, sir.
Q. Did somebody tell you you better be moving into North Dakota?
A. No, sir, I had to move to farm.
Q. Well you had lived there in 1916, hadn't you?
A. Well, I had to hire a man there all the time and be there myself.
Q. Didn't have your family there then?
A. No.

Q. And didn't have your family there at all until May of this year?

A. No.

Q. Now at all times prior to the month of May 1917, you were a resident and citizen of South Dakota?

A. Yes, sir.

Q. And it was while you were a citizen of South Dakota that you made these arrangements to contribute to the fund for maintaining this suit with the understanding and expectation that the state of North Dakota was going to collect your damages from Minnesota and pay them over to you?

Mr. Bronson: Objected to as an improper question, not covering any legal issues involved here.

2301 A. I say I lived in White Rock, South Dakota.

Q. Did you live at White Rock, South Dakota, at the time that you made this contribution to the expense of maintaining this suit?

A. My family lived there, yes, sir.

Q. Did they have an election in White Rock in March this last year?

A. Not that I know of.

Q. In the spring?

A. I don't remember.

Q. Did you vote there?

A. I don't think I did.

Q. Did you vote there in the fall of 1916?

A. No, sir.

Q. Are you a citizen of the United States at all?

A. Yes, sir.

Q. Full citizen?

A. I think so.

Q. Where did you vote last fall?

A. I don't think I voted last fall, because I was busy upon the farm and didn't happen to be down town or any place.

Q. What do you mean by "down town"?

A. I was out on the farm working at the time they had the election.

Q. Election where?

A. I think they had it in the school house out here in Le Mars township.

Q. What place—you said "down town." I asked what you meant by "down town"?

2302 A. Well, you asked me if I didn't vote in White Rock didn't you?

Q. Yes.

A. Well, if I had voted there I would have to be down town, but as I was out on the farm in North Dakota in Le Mars town and they had the election I think out in the school house why I would have to vote there, wouldn't I, when I was there?

Q. Now I asked you what you meant by "down town." You have

got a good ways away from it. You have got out on the farm, and into the school house and out on the prairie, but what did you mean by saying "down town"? Did you mean down to the town of White Rock?

Mr. Bronson: Objected to as repetition.

A. Why there is lots of other towns that is lower than that. Because White Rock is one of the highest.

Q. Had you ever with your family resided in North Dakota, prior to May 1917?

A. No, I didn't have an opportunity to move up on account of the flood water.

Q. Then, as I understand it, Mr. Rydell, when was it that you made this contribution to the expense of maintaining this suit?

A. Why, I couldn't remember the date.

Q. Was it prior to May, 1917?

A. Well, I couldn't say the date.

Q. Do you know when this suit was brought?

A. No.

Q. Was it prior to the time this suit was brought that you made this contribution, according to your understanding?

A. I couldn't understand that?

2303 Q. Did you make the contribution for the purpose of having this suit brought?

A. Yes, sir.

Q. Now in 1917, you say you paid $3 an acre for corn ground?

A. Yes, sir.

Q. You charge here in your damages about five times that amount or about six times that amount?

Mr. Bronson: Objected to as an improper statement of the witness. He took, one half the crop and subtracted the cost of cutting and shocking, and seed.

Q. You have charged $17 an acre for your corn ground in your damages?

A. Yes, sir.

Q. Now, how many bushels of wheat per acre did you raise on this ground that you rented in 1916?

A. About 8½ bushels.

Q. In 1916?

A. Yes, sir.

Q. How many acres of wheat did you have?

A. I think I had about 32 acres of that land that I was on in 1916.

Q. And you say it went 8½ bushel to the acre?

A. I think it did.

Q. Don't you know anything about that?

A. Yes, I know it went 8½ bushel. I figured it at the time.

Q. What part of that did you get?

A. Half of it.

Q. What land near yours in that immediate vicinity went 6 bushel of wheat to the acre in 1916?

2304 A. Why, my neighbor, Geir, I pretty near think got that.
Q. Mr. Geir raised 6 bushel of wheat to the acre?
A. I think he did, if I ain't mistaken.
Q. That is up in section 33 right north of yours?
A. Yes, sir.
Q. Did he have a pretty good crop in 1916?
A. No, nobody had a good crop in 1916.
Q. That is a fair crop, 8½ bushel that you raised?
A. No, that is a very poor crop.
Q. What did you raise in 1917?
A. I got 10 bushels.
Q. That a very poor crop too?
A. Yes, the poorest I ever had.
Q. Where did you farm before you went on this land?
A. Roberts County, South Dakota.
Q. How many bushel an acre did you raise in 1914?
A. I wasn't farming in 1914.
Q. What were you doing?
A. I was running a garage.
Q. Where?
A. White Rock.
Q. 1913?
A. I was there then too.
Q. 1912?
A. I lived in White Rock.
Q. How long did you live in White Rock?
A. I lived there 12 years.
Q. Running a garage?
A. No, sir. I run a harnes shop there for 10 years.
Q. Then for twelve years prior to your acquisition of this
2305 land in question you had run a harness shop and garage?
A. Yes, sir.
Q. At White Rock?
A. Yes, sir.
Q. And you had not been engaged in farming?
A. Not them years, no sir.
Q. And it was some time prior to them 12 years that you had been farming in Roberts county?
A. Yes, sir.
Q. Well, do you know what yield of wheat had been realized on the lands in this particular locality during that 12 years?
A. Yes, sir, I went through it lots of times, I went through the country.
Q. You saw wheat growing?
A. Yes, sir.
Q. Do you know how much it went per acre?
A. What time do you mean?
Q. During the 12 years you lived in White Rock?
A. Yes, sir.
Q. How much?

A. Oh, they considered 20 bushel- a small crop. Between 20 and 30 bushel- was a fair crop.

Q. I suppose a big crop would be around 50 to 75 bushel- to the acre?

A. No, not around this country, that is in Canada.

Q. What did you consider a big crop?

A. 30 to 35 bushels is a very big crop, and 42 is the best I know of—in 1895.

2306 Q. During the twelve years you lived in White Rock that was about an average crop through this flooded territory, somewhere from thirty to forty bushel-, I suppose?

A. 25, 27, 30, 32 bushel-.

Q. Who had that in 1914?

A. I couldn't say. I wasn't out asking a man how much he had.

Q. How do you know anything about it?

A. Because I ran from Fairmount to White Rock lots of times and when I saw them I asked how the wheat went and I had answers, some of them 25, 23, 22, 27 and some 30 and some 32, I know.

Q. It seems you did ask them?

A. I asked lots of them, yes, sir. And lots of them when they came into the harness shop told me how many they had before I asked them.

Q. I understood you to say a moment ago you didn't ask any of them?

A. Yes, I did ask them.

Q. Now who had resided upon and farmed this land in section 9, just prior to your acquisition of it?

A. Caruthers.

Q. You say he was a bachelor?

A. Yes, sir.

Q. How long had he lived there?

A. Seven years, I think he told me.

Q. How much wheat did he have in 1914?

A. I couldn't tell. I never asked him.

Q. You don't know whether he had any?

A. Yes, I know he had.

2307 Q. He had some?

A. Yes.

Q. Do you know how much he got per acre?

A. No.

Q. He was one of the fellows you didn't ask then?

A. Yes, sir.

Q. And yet you bought this land from him?

A. Yes, sir.

Q. Well, when you bought this land from Mr. Caruthers didn't you ask him how much wheat he had been in the habit of raising per acre upon this land?

A. No, I didn't because I didn't expect he would have told me the truth anyhow, so I didn't care to ask him.

Q. Now you think then that Mr. Caruthers kind of put it over on you when you bought this land?
A. No, sir.
Q. Then what reason did you have for expecting him to tell lies if you asked him?
A. Well, you should not ask a man questions that would hurt his feelings if you don't expect him to lie.
Q. You thought he might be a little sensitive on the point of how many bushels per acre of wheat he raised?
A. Yes, sir.
Q. And if you asked him about it he *might* be tempted to lie about it?
A. Yes, sir.
Q. Did you ask Mr. Caruthers how many bushels of oats per acre he had been in the habit of raising on that land?
A. No, sir, it would have been just as bad.

Mr. Bronson: Object to this line of examination on the
2308 ground that it is not proper cross-examination and calls for hearsay testimony; in no way material.

Q. You thought he would have lied just as bad about that?

Mr. Bronson: Same objection to all this line of testimony.

Q. He might.
Q. Did you ask how many bushels of corn per acre had been raised by him?
A. No, sir, I didn't care what he raised on it.
Q. You thought he might be tempted to tell a falsehood about that?
A. Yes, and I didn't care what he could raise on that land.
Q. Now why did you think that Caruthers would lie about the crops that he had been raising on this land?
A. Oh, I thought probably he would make it the best he could.
Q. Is that the rule by which you have been governed in putting in your damages here?
A. No, sir.

Mr. Bronson: Objected to as argumentative and an improper question to the witness.

Q. But you don't know of any reason why Mr. Caruthers wouldn't have told you the truth had you asked him about the productiveness of this land?
A. Well, I didn't care to know how much he raised on that land.
Q. You weren't at all concerned as to the productiveness of the land?
2309 A. Yes.
Q. But you asked no questions about it?
A. Not of him.
Q. Did you ask anybody else?
A. I asked other people around, lots of them, how much they raised on the land around there.

Q. What did you ascertain Mr. Caruthers had been raising per acre of wheat?

A. I didn't ask him what he was raising. I asked the others what they were raising.

Q. Well, who did you ask?

A. Lots of them,

Q. Did you buy any of their land?

A. No, sir.

Q. You were buying this land?

A. Yes, sir.

Q. And yet you asked no questions concerning it?

A. Not what he was raising.

Q. What excited your particular interest in the land of other people when you were going to purchase this?

A. Well, if I bought some of the other people's land probably I would ask Caruthers what he raised.

Q. Now you say that you bought this land in what part of 1914?

A. December 1st I think was the day the deed was made out. I made the bargain before that.

Q. Had Mr. Caruthers had the land in crop that year?

A. Yes, sir.

Q. How many acres of wheat did he have?

A. I couldn't say.

2310 Q. How many acres of oats did he have?

A. I couldn't say.

Q. How many acres of corn?

A. Just a small piece. I seen it there.

Q. How much hay had he put up?

A. He was selling his hay land, most of the years.

Q. He didn't put up the hay on it himself?

A. Not much.

Q. Was Caruthers the man that broke up this land first?

A. I don't know anything about that.

Q. Didn't you ascertain anything about this history of the land before you bought it?

A. No, sir.

Q. Didn't ask any questions about that?

A. No, sir.

Q. Or when it was broken up?

A. I didn't ask.

Q. Nor how old the buildings were?

A. I seen that.

Q. What?

A. I seen how old the buildings were. They were just put up. They weren't finished.

Q. They were new then?

A. Yes, sir.

Q. Did you put them up?

A. No, he put up the frame work and had them quite a ways up when I bought it, but they wasn't finished up. I done that.

Q. Well, this land had been settled for something like thirty or

more years—that is had been taken from the *the* govern-
2311 ment—hadn't it?
A. I don't know. I couldn't say.
Q. You don't know as to that?
A. No, sir.
Q. It was within what distance of Blackmer station?
A. A mile and a half.
Q. And it never had had any buildings on it prior to, 1914?
A. Yes, it had.
Q. House?
A. Yes, sir, a kind of a house that he lived in.
Q. Kind of a shanty?
A. Well, I think it is a small house 14 x 12.
Q. Have a good barn?
A. 16 x 26, barn and granary together.
Q. How high was it?
A. I think it is ten feet high.
Q. And is that all the barn that was ever on there?
A. Well, there is room for five horses, and the granary.
Q. And considerable grain?
A. Yes, sir, there was a space of 16 feet one way and 12 the other.
Q. Do you know when the barn was built?
A. No, I couldn't say.
Q. Didn't you look to see how old it was?
A. It didn't look old. It looked pretty good.
Q. Looked pretty new?
A. Yes, sir.
Q. And as to how many years it had been broken up you
2312 asked no questions?
A. I didn't ask him.
Q. I notice your picture here has only a picture of the house. Where is the barn?
A. Well, he has not taken the picture so he got the barn on it, but it is there.
Q. Is there a barn on the premises now?
A. Yes, sir, and it has horses in it.
Q. This same barn?
A. Yes, sir.
Q. Are you living on these premises now?
A. No, I am up there plowing. I got my family in town.
Q. In White Rock?
A. Yes, sir.
Q. When did you move back to White Rock?
A. I moved back when school started.
Q. In September?
A. Yes, sir.
Q. Of this year?
A. I moved the family down to go to school.
Q. And you are staying now on this land?
A. Yes, sir.
Q. Are you plowing it up?

A. Yes, sir.
Q. Got it pretty well plowed?
A. No, sir.
Q. Is it just as dry as it ever was?
A. Yes, sir, it is.
Q. Now how many acres did you say there were in the government lots 1, 2, 3 and 4?
2313 A. Why, I don't — exactly how much it is in them lots except what he told me. He told me there was 300 acres altogether, the four lots and the quarter.
Q. Did you ask him that?
A. Yes, sir.
Q. Didn't you think that he was going to lie about that?
A. No, I didn't think so, because that wouldn't be no benefit to him to lie about an acre.
Q. It would be a benefit of $50 if he didn't have it?
A. I thought he might think I had a chance to look it up.
Q. Did you look it up?
A. No.
Q. You didn't look it up at all?
A. No.
Q. Now you say there was 160 acres in the quarter?
A. Yes, sir.
Q. That is the east half of the northwest and the west half of the northeast?
A. Yes, sir.
Q. Now you say there is lot 1?
A. Yes, sir.
Q. How many acres is in that?
A. I don't know.
Q. It is 15 acres, isn't it, according to the plat?
A. I don't know.
Q. Ever look it up on the government plat?
A. No, I haven't.
2314 Q. Well, look at this government plat, Exhibit 108, and tell me how many acres there are in that?
A. I don't think I would know that if you show me because I ain't much acquainted with maps.
Q. Now from this government plat, Exhibit 108, it appears that lot 1 has 15 acres, lot 2 has 12½ acres, lot 3, 11.10 acres, and lot 4 has 15½ acres. That makes a total, of 54.10 acres. That makes 214.10 acres in the whole tract. Did Caruthers stick that on to you as 300 acres?
A. I guess he did. It looks to be more than that when you get on to it.
Q. Well, it looks as though he might have lied about that too, dosen't it?
A. It looks like there must be something.
Q. Now can you tell us any more definitely where the 300 acres is?
A. I don't think I know any part as much about that as you do. I can't dispute that.

Q. You never looked at the government plat at all to see whether you were paying for in the neighborhood of 100 acre- more than you got?
A. No, sir.
Q. At $50 an acre?
A. No, sir.
Q. Now you say you paid him $50 an acre for 300 acres, $15,000?
A. Yes, sir.
Q. That is what you paid Caruthers?
A. Yes, sir.
Q. Will you tell us how you paid that?

Mr. Pinkney: Objected to as incompetent, irrelevant and
2315 immaterial, not cross-examination, and not tending to prove any issues in this case.

A. I paid him some cash.
Q. How much?
A. I couldn't say. I couldn't remember how much cash I paid him.
Q. You bought a farm of 300 acres and paid $15,000 for it?
A. Yes, sir.
Q. And don't you know anything about how much cash you paid?
A. I don't remember.
Q. Is there any method on earth by which you can call to mind or ascertain how much cash you paid that man?
A. I can't remember.
Q. Can you look it up?
A. I don't know if I can. I could probably find some checks that I gave him, if they are home, because I know I paid him different times, gave him checks, and also I gave the other Caruthers a mortgage back on some part of it. I don't remember just how much it is. And then I gave him one garage but just how much cash I did give him I don't remember.
Q. Did you give him any automobiles?
A. No, sir.
Q. Now, Mr. Rydell, is it possible that you don't know anything about how much cash you paid that man?
A. I couldn't remember how much cash I gave him, because I paid him quite a few times.
Q. How much did you turn in the garage at?

A. I don't just remember what that was called.

2316 Q. Can you remember any figure in the general neighborhood of how much you turned in the garage at?

A. Why that won't be any good.
Q. The garage wasn't any good then?
A. Yes, it was.
Q. Well, how much was it good for? That is what we want to know?
A. Ten or twelve thousand, I would think.
Q. Was it ten or twelve thousand?
A. I don't remember what we figured it at.

Q. Well, call it twelve thousand shall I?
A. Any figure you like.
Q. I want any figures that you like and that are the truth?
A. I couldn't tell you. I couldn't remember for sure.
Q. Well, will it be substantially true to put it at $12,000?

Mr. Bronson: Objected to as already answered by the witness, and simply repeating the same question in a different form.

A. I think that would be more than we put it at. There is a $3,000 mortgage on it to his brother, so I know there couldn't be $12,000.
Q. $15,000 and you gave a mortgage for $3,000?
A. $3,000 and a few hundred. I couldn't remember how many hundred.
Q. We will say $3,200. Would that be about right?
A. I couldn't remember.
Q. Well, it would be in the neighborhood of $12,000 besides the mortgage then? Do you think you put in the garage at
2317 $10,000?
A. Yes, I couldn't remember for sure the figures the way we figured it.
Q. You think it would be somewhere around that, or $11,000 we will say? Is that about right?
A. Probably.
Q. That would leave $800. Do you think you paid $800 in cash?
A. I know I paid him cash checks a few times.
Q. You gave him that in small amounts along as he needed it?
A. A few different times he came and I gave him some.
Q. A few different times he came for money and you gave him some?
A. Yes, sir.
Q. And if we call the garage $11,000 it would be $800 in money. Is that about right?
A. That may be right; I don't know. I couldn't say for sure.
Q. Where was this garage?
A. That was in White Rock.
Q. Who built it?
A. I did.
Q. What did it cost you?
A. Well, I couldn't remember just exactly.
Q. Well, can you remember anything near what it cost you?
A. Cost me around, I think I figured between eight and nine thousand.
Q. When did you build it?
A. 1912.
2318 Q. What of?
A. Brick.
Q. Now, what size was it?
A. 40x82.
Q. How many stories?
A. One story.

Q. What kind of a floor did it have, a cement floor?
A. Yes.
Q. What did the lot cost you that it was on?
A. $1,025, I think.
Q. Corner lot?
A. No, sir.
Q. On the main street?
A. Yes, sir.
Q. Was there a building on the lot when you bought it?
A. No, sir.
Q. Just paid $1,025 for the bare lot?
A. Yes.
Q. Pay cash or on a trade?
A. That was cash.
Q. Of whom did you buy that lot?
A. Dave Nichols.
Q. Then you think that building cost you somewhere around eight or nine thousand dollars?
A. Yes, sir.
Q. And you used it twelve years?
A. No, sir.
Q. You had had it something like two years when you traded it to this man?
A. Yes.
2319 Q. Now do you know what Caruthers paid for this land when he got it?
A. No, sir.
Q. Did you ask him?
A. No, sir.
Q. Did you go look at his deed?
A. No, sir.
Q. Did you inquiry of any one else what Caruthers paid for the land?
A. No, sir.
Q. Did you inquire of anyone about the land values in that vicinity when you got this land?
A. Not when I got this land, no.
Q. Then you didn't know whether you were paying the market value or two or three times the market value or anything about that, did you?
A. I had an idea I got it cheap.
Q. Where did you get that idea?
A. Because I asked people living around there what the land was worth around here between Fairmount and White Rock.
Q. I thought you said you didn't make any inquiry about it?
A. Yes.
Q. You did ask about it?
A. Yes.
Q. Whom did you ask?
A. Lots of them came into the store, but not when I was buying the land.

Mr. Bronson: Objected to as incompetent, irrelevant and immaterial and simply loading the record, this line of examina-
2320 tion.

Q. You say that you asked lots of people what this land was worth?

A. No, sir, I asked what land was worth lots of times between Fairmount and White Rock when I was in the harness business.

Q. Did you ever ask any living person what this land was worth before you bought it?

A. No, sir.

Q. Then I say again you bought it without any knowledge whether you were paying its fair market value or not?

Mr. Bronson: Objected to as argumentative.

Q. You didn't know when you bought this land anything about its market value, did you?

Mr. Bronson: Same objection.

A. Not that special piece.

Q. And as a matter of fact when you bought it it didn't have any market value did it?

Mr. Bronson: Same objection. And improper cross examination and simply tending to browbeat the witness.

A. Yes, I think it had a value and I thought it was cheap, the price I got it for.

Q. Pretty cheap land.

A. Yes, sir.

Q. Did you look at the government plat to ascertain whether it was swamp land or not?

A. No, sir, I didn't.

Q. As a matter of fact the government plat shows all of lots 1 and 2 and part of lot 3 and nearly all of the southeast eighty as swamp land, marsh land, does it not?

2321 Mr. Bronson: Objected upon the ground that he doesn't *present* to testify and cannot testify as to what the government plat shows. The plat shows for itself.

Q. You didn't look at it to see if it was swamp land or not?

A. No, I look at the land though.

Q. You couldn't find any swamp on it?

A. No, sir.

Q. Nor any marsh on it?

A. No, sir.

Q. Nor any overflow land on it?

A. Yes, sir.

Q. Where did you find the overflow land?

A. Down close to the river.

Q. Some water on there when you bought the land?
A. A little bit on there.
Q. Some that came out of the river?
A. When the river overflowed.
Q. The river overflowed when?
A. That was 1914, late in the fall. The river was high and Traverse Lake was especially high at that time.
Q. When you bought this land?
A. Yes, sir.
Q. What time in the fall?
A. That was in December, but this was when I looked on the land before it froze up. That was before I bought it and it was in October.
Q. In October, 1914, before you bought this land and looked at it?
A. Yes, sir.
Q. And you found the river overflowed onto it?
2322 A. Well, there is really no banks there at all.
Q. No banks to the river there at all?
A. Not to amount to anything.
Q. And you found the water overflowing onto the land?
A. Yes, it was inside of that 300 acres.
Q. And you found Traverse Lake very high that fall?
A. A little bit higher than it used to be.
Q. And you knew when you bought that land, Mr. Rydell, perfectly well that that land was overflowed from that river and subject to overflow from that river, didn't you?
A. No, I didn't know that.
Q. Couldn't you see the water coming up onto the land from the river?
A. Why some years that lake used to be a little bit higher and another year again it is a little bit lower and we never paid no attention to that.
Q. Didn't you see that river coming up on that land there the fall you bought it and before you bought it?
A. Well, I know there was a little bit of water on one side of it when I got it.
Q. And you say there was no banks to the river at that point?
A. Yes, sir, not very big banks.
Q. And you knew perfectly well when you got that land and traded that garage for it at $11,000 or $12,000, that that was land that was subject to overflow from that river, didn't you?
A. No, I never thought then that that river, the overflow would reach the land any way because I never seen it.
Q. Didn't you make any inquiry about that?
2323 A. No, sir, I didn't.
Q. You didn't ask anybody whether that river had been up over that land and flooded it?
A. No, sir.
Q. And you didn't ask Caruthers about that?
A. No, sir.
Q. You just simply made this trade and got it and then it got

some water on it and you want the state of Minnesota now to pay you something over $7,000 damages for those three years, 1915, 1916 and 1917, don't you?

A. Yes, I would have that money now if it had — been for the ditches overflowing that land.

Q. The ditches overflowed?

A. Yes.

Q. Where?

A. Ditches in Minnesota that is throwing the water into Lake Traverse.

Q. Where?

A. The Mustinka ditch.

Q. Where?

A. Down west of Wheaton.

Q. When did it do that?

A. Well, they been doing that for the last three years.

Q. Have you been down there?

A. Yes, sir.

Q. You followed the water down?

A. No, I followed the road.

Q. But you know that the water from some ditch in Minnesota came up and got on your land?

2324 A. Yes, I seen it.

Q. You saw the water there?

A. Yes, sir.

Q. From a ditch in Minnesota?

A. Yes, sir.

Q. On your land?

A. Yes, sir.

Q. Smelled it, I suppose?

A. There is no stop to it so it had to come there, and I could see it running.

Q. You could see water running in—there was no water on the Dakota side?

A. You can follow the road and see the water the whole way where it is running.

Q. Was any water coming down on the Dakota side in 1916?

A. Well, I wasn't out when it was raining real hard so I couldn't say that.

Q. Were you out when it was raining real hard in Minnesota?

A. No, sir, but the water was running there when it ain't raining.

Q. No water coming from the Dakota side onto this land?

A. I suppose when it is raining hard.

Q. Then it came from all directions?

A. Yes, sir, all around, the lake.

Q. But this particular water that did the damage on your land came from the ditch in Minnesota, there can't be any question about that?

2325 A. I think it done the damage on all the land around here.

Q. Well, all the damage done on this land around here was done with Minnesota water, wasn't it?

A. Well, I never seen it before as long as I been in this country that there was really any damage to the country from all the rain that they had any year. It didn't seem to hurt. It might raise the water in the lake for a little while but it always go- off short- so it didn't hurt the crops any.

Q. And the mischief that was done here on all of this land was caused solely by Minnesota water?

A. I don't believe any crops would be drowned out if it hadn't been for the ditches.

Q. Ditches where?

A. Down in Traverse County.

Q. Were there any ditches *i*f Roberts County, South Dakota?

A. Not any I know of.

Q. Not any whatever?

A. Not any I know of.

Q. Did you ever look to see?

A. I have been some places there.

Q. There are no ditches whatever in Roberts County South Dakota?

A. Not that I seen.

Q. That run into Lake Traverse?

A. Not any place I traveled.

Q. There never were any there?

A. Not that I seen.

Q. Did you look for any?

A. Why, not very much, no.

2326 Q. You wen*y* peeking around down in Minnesota but you didn't look for any in Dakota?

A. No, you don't need to peek around for them in Minnesota, because you got to look out so you don't fall in them.

Q. How about over in Dakota?

A. I haven't seen any there in South Dakota.

Q. You haven't looked for any there?

A. No.

Q. Now which one did you fall into in Minnesota?

A. I haven't said I fell into any, but I says you have got to look out else you will.

Q. Where is that?

A. Well, you can try it some day along the road between Herman and Wheaton in a car when the road is a little slippery.

Q. If you don't look out when you go from Wheaton to Herman you will fall into the Mustinka Ditch?

A. You might slide into some of them.

Q. At what particular point between Herman and Wheaton does the Mustinka ditch cross the road?

Mr. Bronson: Objected to as not proper cross examination. The witness didn't say that.

A. I couldn't tell that.

Q. Well, if you don't know where it is how do — go when falling into it?

A. You can fall in by the side, and you find lots of ditches this side of the road.

Q. Where?

A. Between Herman and Wheaton.

2327 Q. But you don't know the particular location of the Mustinka State Ditch between Herman and Wheaton, do you?

A. Well, I couldn't tell the sections.

Redirect examination.

By Mr. Bronson:

Q. You know, Mr. Rydell, that you never saw any water on this land or lands surrounding yours like you saw in 1915, and 1916?

A. Yes, I know there never was there.

Q. And you knew from the years you had been at White Rock and various times running back to 1896 and right up to the present time, from the observation that you made in traversing the territory from Fairmount up to White Rock, this territory that had been flooded, in 1915 and 1916, that for the years you had observed it it had been farmed and cultivated and crops raised on it, did you not?

A. Yes, sir.

Q. And you knew particularly when you purchased this land that the lands including this land in that vicinity had been cropped and crops raised on it every year?

A. Yes, sir.

Q. Now counsel has asked you a whole lot of questions about the government plat and asked you as to what the government plat showed, and asked you a lot of questions as to what marshes where shown on that government plat. Now I will ask you whether or not this land in section 9, which you bought from Mr. Caruthers and which counsel has tried to have you testify wasn't 300 acres but was something less than 300 acres, whether or not you have to start with a quarter section of land out side of the government lots?

A. Yes, sir.

2328 Q. And then there are the Government lots 1, 2, 3, and 4?

A. Yes, sir.

Q. And then east of there, east of these government lots there is a meander *land* that runs to the river?

A. Yes, sir.

Q. And before you bought that land you looked it over?

A. Yes, sir.

Q. You had farmed before?

A. Yes, sir.

Q. In South Dakota and in Minnesota?

A. Yes, sir.

Q. And you were able to jusge about land by looking at it, weren't you?

A. I thought so.

Q. You don't pretend to be an engineer?

A. No, sir.

Q. Or surveyor?

A. No, sir.
Q. You had learned by experience what farm values were and what constituted good farm lands, had you not?
A. Yes, sir.
Q. And before you bought this land you looked it over?
A. Yes, sir.
Q. And saw the extent of it?
A. Yes.
Q. And you thought you were getting 300 acres?
A. Yes, sir.
Q. And did you get 300 acres?
A. I thought so.
2329 Q. And you think so now?
A. Yes, sir.
Q. You think there is 300 acres there, do you not?
A. Yes, sir.
Q. Now you were often at White Rock in the year 1897, were you not?
A. I wasn't living there.
Q. But you were at White Rock?
A. Yes, sir I went down there pretty near every week.
Q. And had occasion to drive to White Rock?
A. Yes, sir.
Q. Practically once a week during that season?
A. Yes, sir.
Q. And prior to 1915 was there any year when conditions were to be compared with the flood waters that you had in the year of 1897 by reason of winter snows, up to the year 1915?
A. Not up until 1915.
Q. Now even in the year 1897, concerning which testimony has been given by other witnesses will you state whether or not as you drove to White Rock at different times you could see whether or not in the summer the lands were being farmed north of White Rock on the White Rock road?
A. Yes, sir.
Q. Even in the year 1897?
A. Yes, sir.
Q. Now during the years you have been in business at White Rock have you had occasion to drive to Fairmount from time to time?
A. Yes, sir, many times.
Q. What roads would you go from Fairmount to White
2330 Rock and back on?
A. Our nearest road was the road they call the meridian road.
Q. Where did that road go?
A. That runs a mile, I think it is, a mile east of Fairmount going south.
Q. To White Rock?
A. Yes, sir.
Q. And to what extent did you drive on that road and when did you drive on that road, generally speaking?

A. 1910, 1911, 1912 and 1909.
Q. Frequently or not frequently?
A. Not very often. Once in a while.
Q. Sometimes every year?
A. Oh, yes.
Q. During the Summer months?
A. Through the summer months, yes.
Q. Did you drive on that road in 1915 or 1916?
A. 1915 up to July I drove that road, but not after that.
Q. Why not after that?
A. Why the road farther down was flooded.
Q. Had there ever been a time during the times you have been a resident of the town of White Rock and been familiar with the conditions in that territory when you saw that territory flooded in the shape that it was in 1915 and 1916?
A. Never.
Q. Counsel asked you about doing some plowing this year on this land that you bought, and whether or not it was dry. Now what shape was that land in this spring, 1917?
A. Water on it.
2331 Q. Wet?
A. Yes, sir.
Q. And what have been the difficulties and trouble in plowing it?
A. Couldn't get on there.
Q. When did you start to plow it?
A. About a month ago.
Q. Couldn't you plow it before that?
A. Yes, a person could have started in to plow it in August.
Q. But not before that?
A. No.
Q. Now there is a draw through you- land?
A. Yes, sir.
Q. And apparently on this land of yours that is east of the government when the river is a little higher over there are there two branches of the river there, and does the river divide or spread over the land or what—has it shallow banks there?
A. Shallow banks there.
Q. And what direction does that draw run through that land?
A. A little bit of south, straight west, but a little bit on the south, southwest and northeast, pretty near straight east and west.
Q. Any water in the Bois des Sioux river now passing your place?
A. Yes, there is a little bit.
Q. A little current in it?
A. No, I don't think so.
Q. Where are you plowing on your land now?
2332 A. On the quarter.
Q. Have you plowed any of the government lots?
A. No, nothing broke on them.
Q. That is a little lower than the quarter?
A. Yes.

Q. The water gets up on that sooner than it does on the quarter?
A. Yes, sir.
Q. What is the character of the soil?
A. Why, it is a black, good dirt.

Recross-examination.

By Mr. Palmer:

Q. I want to know where this wonderful wheat land is—you say you had fifty acres of wheat?
A. Yes, sir.
Q. In the spring of 1915?
A. Yes, sir.
Q. Where was that?
A. That is on the east side of the quarter.
Q. On the east side of the east eighty?
A. Yes, sir.
Q. That ir right next to the river?
A. No, next to the government lots.
Q. Well, right next to this draw that goes through there, or sort of slough?
A. No.
Q. It is away from that?
A. Yes.
Q. Now where is the 54 acres of oats?
A. It is above that quite a ways.
2333 Q. Further west?
A. Yes, sir.
Q. Over on the west eighty?
A. Why, some of it, I guess.
Q. And the 26 acres of corn, where was that?
A. It is on the northwest corner of the——
Q. Of the quarter, you mean?
A. Yes.
Q. Now did you break up and land new in the spring of 1915?
A. No, sir.
Q. This 130 acres was land that Caruthers had in crop?
A. Yes, sir.
Q. Is that all the land ever broken on there—130 acres?
A. I would almost think so.
Q. 130 acres out of 300, is that all that had ever been broken up when you got it?
A. Yes.
Q. Now, you say Caruthers had been renting his land for hay?
A. No, he sold the hay land every year.
Q. For how much an acre?
A. I think he said he was getting $3.00.
Q. For how many acres?

A. I don't know how many. He told me he had sold hay land for $198 that year I got it.

Q. Well, you have here $480?

A. Yes, but he cut hay for himself and there was not all of it cut.

2334 Q. Do you know any reason why it wasn't cut?

A. No, I don't.

Q. Had there been any hay cut over there in this swamp between the two rivers that is indicated here on this plat?

A. Yes.

Q. In 1914?

A. Why, I think it was cut in 1914 because they used to cut that. I don't know whether it was cut that year or not.

Mr. Palmer:

Q. This Exhibit 109 appears to show that there are three distinct branches of this river across this land in section 9 and easterly of it?

A. Yes, sir.

Q. Is that about right?

A. I think that it is here because I know in one place on my land there was no water down here. When there was it is here some place and there is quite a lot of land here and you can find it standing here (indicating).

Q. As I understand it then, this easterly branch usually carries water, at times you find water in this central branch and at times of high water you find water in this westerly branch?

A. That is, when the water is high it goes into the west.

Q. Into the west one?

A. Yes, sir.

Q. And this neck of land between the two part- of the river appears never to have been surveyed of platted into a lot or anything. Does Crothers appropriate and use the land in there?

A. I guess he sold the hay land.

Q. You think he sold the hay on that?

2335 A. Yes, sir.

Q. And the land that has never been surveyed between those two branches of the river together with the river itself, the river bed, helps to make out your 300 acres?

A. I thought that was there when I seen it.

Q. You counted in all the river, didn't you?

A. No, I didn't think it was all river.

Q. I mean the two west branches across there.

A. I don't think there could be any water in there when I was on it.

Q. But you counted this in on your 300 acres?

A. Of course, when they had surveyed that they know there was water on there but when I looked there was no water there.

Q. I want to ask you this; how long did this man Crothers keep that Garage you traded him?

A. He has got it yet.

Q. Operating it himself?

A. No, sir.
Q. Rents the buildings?
A. It was rented when he got it and it is still rented.
Q. You had rented, had you?
A. Yes, sir.
Q. You were not operating it?
A. No, sir, I was not when I traded it.

Redirect examination.

By Mr. Bronson:

Q. Let us see if you understand how this river runs past you-place, Mr. Rydell. When you start as a commencing place from this quarter that you have to the west, which would be in section
2336 9, you go eastward over the government lots?
A. Yes, sir.
Q. And then do you come to a draw you cross?
A. No.
Q. Or just a low depression?
A. A little bit lower.
Q. And then do you go over some more land that is just a little bit higher before you get to the river?
A. Yes, sir.
Q. Then this map, Exhibit 109, which shows what looks like two rivers here, two different rivers, the westerly side or branch is simply a depression that goes over the land, as I understand?
A. That is the way I understand it, too.
Q. The current does not run into it now?
A. No, sir.
Q. There isn't any water in it?
A. No, sir.
Q. There is water in the main Bois de Sioux, which branch is shown on the east side of this map?
A. Standing water, yes, sir.
Q. Now?
A. Yes, sir.
Q. And those government lots that have been described and this territory clear up to the banks of the river, is hay land?
A. Yes, sir, hay land.
Q. And you figured it in here in your computation?
A. Yes, sir.
Q. In other words, your farm extends from that quarter section clear over to the east branch of this river?
A. Yes, sir.
2337 Q. That is the land you had since 1914?
A. Yes, sir.

Recross-examination.

By Mr. Palmer:

Q. Mr. Rydell, when you bought this land you bought this quarter section and these four government lots, did you not?

A. Yes.

Q. And this land to the east of those government lots, Mr. Crothers before you and you since you got it, have just simply taken and appropriated?

Mr. Bronson: That is objected to on the ground that it calls merely for a legal conclusion of the witness and is improper cross-examination, and upon the further ground that as a matter of law the meander land between the meander line made by the government survey and the main channel of the Bois de Sioux is a part of such government lots and so held under the decision.

A. I didn't know, I thought there was 300 acres and I think it is there.

Mr. Palmer: You have taken clear over to the eastern channel of the Bois de Sioux?

Mr. Bronson: That is objected to as an improper statement to the witness, he has not made such a statement, in the evidence, confusing issues here that are not involved; the pleadings themselves speak of the line between the state of North Dakota and the State of Minnesota and there is no dispute about it.

A. I don't know how far that will go but I don't think I have taken any more than what belongs to it and I don't want any more.

2338 Mr. Pinkney:

Q Than the deed calls for?

A. No.

Mr. Palmer:

Q. You haven't yet answered the question.

Mr. Bronson: I submit the witness has answered the question.

Mr. Palmer:

Q. You have taken clear over to the eastern channel of the Bois de Sioux river as shown on this plat, Exhibit 109?

A. No, not to there, because that would be taking in the river.

Q. I mean to the channel?

A. That is no- water, that is hay land.

Q. Read the question.

(Question is read by reporter.)

A. I have taken down to the road where the river is.
Q. You have taken clear over to the eastern river?
A. No, not to the eastern, to the west side of the river.
Q. To the west side of this eastern arm of this river?
A. No, I don't think so, not the river.

Mr. Bronson:

Q. There is just one river, running north and south?
A. That is all I have seen.
Q. That is all anybody sees that goes down there, only one river?
A. That is all.
Q. There are no two rivers there?
A. No, sir, never was.

Mr. Palmer:

Q. I wish you would look at this map and tell me which
2339 one of those you are calling the river, which one of those arms?

Mr. Bronson: You understand that map, Mr. Rydell?

A. I don't know much about a map; I can't tell much about a map because I never practiced anything on maps.

Mr. Palmer:

Q. If you took just the land which you have here described it would be about 214 acres. Now, I understand that you have taken land easterly of that sufficient to make in your opinion 300 acres, is that correct?
A. I think there is 300 acres which I bought there in land before you get to the river.
Q. Is that what you have taken, 300 acres, according to your best estimate?
A. Why, I think I got them 300 that I bought there before I get to the river.

Redirect examination:

By Mr. Bronson:

Q. You bargained for 300 acres?
A. Yes, sir.
Q. And you expected to get 300 acres and you think you have got 300 acres?
A. Yes, sir.
Q. And those 300 acres run from what you have termed the quarter section over to the river?
A. Yes, sir.
Q. And there is only one river there?
A. Yes, sir.

Q. And those other branches that counsel has spoken of as branches of the river are simply draws?

A. I haven't seen any.

Q. You haven't seen any branches?

2340 A. No, sir.

Q. There is one main river that runs past your farm?

A. There is no river running past my farm; there is a draw running east and west and there is one running past my land.

Q. Bois de Sioux river runs in a northerly and southerly direction, one main stream past your farm and no more?

A. One stream and no more.

Recross-examination.

By Mr. Palmer:

Q. I wish to ask at this time that this witness produce here his deed to this land. Will you do so, Mr. Rydell? You can produce it, can't you?

A. Not here without going to White Rock and get one.

Q. You could do that? Or send it up to Mr. Bronson and have it put in?

A. Yes, sir, I suppose it can be sent up.

Q. I wish you would please do that. Do I understand you to say that no part of your land in section 9 whatever has been put into crop in 1917?

A. No, sir.

Q. You mean no part of it was?

A. No part of it was.

Q. Do I understand you to say that no hay has been cut on any part of it?

A. No, no hay has been cut. There has been cut rushes and things so as to give a chance to get through and plow it and burn it and that is piled up. The fellow may call that hay but it is cat-tails and other rushes, many loads of it.

Q. Did you cut any of the hay land this year?

2341 A. There is cut some down close to the river but it ain't hay, it is kind of rushes.

Q. Was it cut on plow land — on the hay land?

A. The most of it is cut on the plow land where I am now plowing before I could burn it but I had to cut it away so I could burn it and plow.

Q. How much of the hay land has been cut this year?

A. Close to the river of the hay land might be 5 or 6 acres, very small pieces there.

Q. And that hay has been put up in stacks?

A. It is piled up, yes, sir.

Q. Was any of the pasture land cut for hay this last year?

A. No, sir, I just burned it the other day, all cat-tails.

Q. Was any part of the farm used for pasturage this year?

A. No, sir.

Q. As I understand it, there is about 4 or 5 acres of the hay land that has been cut for hay, and that that is all that has been made any use of this year, all of the farm?

A. Mr. Powell sold some of his hay land adjoining mine and them fellows that cut that hay got over, I think, but I ain't really sure of it, but as close as I could see they went over and got in on mine, four or five acres.

Redirect examination.

By Mr. Bronson:

Q. Some of this marsh grass or hay that counsel has referred to that you have cut this year has been stacked up?

3342 A. It is in piles.

Q. How many piles did that make.

A. Down on the low farm, I think there is three.

Q. And there is some on the higher land?

A. On the field I cut the cat-tails, and there is ten piles.

Q. When was that put up?

A. The ten piles was put up there I think the last part of August as soon as we could get in there.

Q. And is it there now?

A. Yes, sir.

Q. And when were the three piles put up?

A. They were put up later.

Q. When?

A. I put them up so that I could use —in place of straw that wasn't getting out of the place and that was put up after harvest about September.

Q. And they are there now?

A. Yes, sir.

Q. And that would make thirteen piles?

A. Yes, sir.

Q. And if any person drove by on the road near your farm and saw thirteen, what he might testify to be nine or ten or thirteen stacks of hay on your premises, it would be these piles?

A. Yes, sir.

Q. And in these piles would be some of these cat-tails?

A. Yes, sir.

Q. And these are the weeds and growth that grew up as the result of those floods of 1915 and 1916?

3343 A. Yes, sir.

Q. Have no value as hay?

A. No, sir, not as hay; they may be used in place of straw.

Q. For bedding purposes?

A. Yes, sir.

Q. And you contemplate burning them or have burned some of them?

A. No, sir, not of them, they are there yet.

Q. One other question; counsel asked you about your interest in this action and questions about your contribution. I will ask you to

state whether or not you expect in this proceeding of the state of North Dakota against the State of Minnesota that the State of North Dakota should protect your property rights in this state?

A. Yes, sir.

Q. And you presented this claim for damages that had been sustained to the land to your best ability and as you estimated it and stated it to be for that purpose?

A. Yes, sir.

2344 B. W. SCHOUWEILER, being recalled for further cross-examination testified as follows, examined by Mr. Palmer:

Q. Mr. Schouweiler, do I understand you to say that this land company took this land, which you have heretofore described, off of your hands in 1916 on the basis of the original purchase that they made for you in 1912?

A. Yes, sir, with costs added.

Q. And did they pay you interest on the original purchase price of $50 an acre the same as though that arrangement had remained in force?

A. Yes, sir.

Q. And paid you interest at the rate of 6 per cent and all costs?

A. Yes, sir.

Q. Now, that being true——

A. That is, I am quite sure that they paid me the interest. I know that they paid me the costs and I am quite sure the interest too. I figured up what it amounted to and I think they reimbursed me every cent just the same as if the land had been taken over on the day they bought it in 1912.

Q. That being true, the crop for 1915 did not belong to you but belonged to the land company?

A. No, sir, I started the foreclosure and I consulted an attorney in regard to it and he advised me to go on and crop it and if the party under the law, he says, "if the party comes in and pays you, you will have to give him the benefit of this crop less the costs of——"

Mr. Pinkney: In other words, you would have to allow him the proceeds of the crop?

2345 A. Proceeds of the crop less the costs of cutting, harvesting and so on.

Mr. Palmer:

Q. The purchaser did come in and did pay you?

—. No, as far as the records show, they purchaser was the party that they sold the land to. I deeded direct to the Illinois man, the land company's name did not appear although it was a verbal agreement that I was to have $50 an acre for that land between me and them—in fact, they bought it only we didn't have anything in writing—and when they come along with the papers for the $50 running to the party in Illinois, a party by the name of Nagel, it was transferred from me direct to Mr. Nagel. Then when Nagel neglected to

pay the interest in 1914, I think he paid the interest in 1913, but not in 1914, so I foreclosed, starting in in the winter of 1914, I think, and in the season during the foreclosure proceedings, during the season of 1915, I cropped it, according to the instructions of the attorney at Wahpeton.

Q. That is you cropped the land during the year allowed by law for redemption?

A. Yes, sir.

Q. And afterwards the land company carried out the original agreement with you and paid you the $50 an acre and the interest and costs?

A. Well, they paid me what Mr. Nagel owned me, the $2,000 was taken out of the $50 an acre, that Mr. Nagel paid. They paid me the difference and took the land.

Q. And you claim that this crop of 1915 belonged to you?

A. Yes, sir.

2346 Q. And that this claim for damages that you make here belongs to you?

A. Yes, sir.

Q. Do you say that if you raised a crop there in 1915 and the land company had gone on and completed the payments to you the same as they did, that that crop would have belonged to you and not to them?

A. I think it would have belonged to me.

Q. In addition to your purchase price and interests and costs?

A. Yes, sir.

Q. During the year of redemption?

A. Yes, sir.

Q. You figure that would have belonged to you too?

A. It would unless Mr. Nagel stepped in, then I would have had to apply it on his payments to me.

Q. The records show that you sold the land to Nagel at $65 an acre?

A. I presume so.

Redirect examination.

By Mr. Pinkney:

Q. Did the land company when they took over the land from you also buy the crop of 1915 that you had produced on this land?

A. They bought the crop the year I sold, that was 1912.

Q. But did they buy the crop of 1915, when they took over the land in 1916?

A. No, sir.

Q. Did they pay you interest for the time that you took 2347 the crop off of the land?

A. That I wouldn't swear to.

Q. As I understand it, you sold the land company under a contract with them, under an agreement you had with them?

A. I think it was some kind of an agreement between me and the land company at $50 an acre.

Q. And under that agreement, you got the crop of 1915?

A. Yes, sir.

(At this time recess is taken until 9:00 A. M. Nov. 8, 1917.)

2348 Hearing resumed pursuant to adjournment at 9:00 a. m. November 8, 1917, all parties being present.

JOSEPH A. SAUTER, having been called as a witness on behalf of the complainant, was duly sworn and testified as follows:

Direct examination.

By Mr. Bronson:

Q. State your age, residence, post office address, and business?

A. My age is fifty years at my last borthday; my residence is six miles south of Fairmount in section 20-129-47; post office address Fairmount, North Dakota, business farming.

Q. Are you the owner of the southeast quarter of the southwest quarter of section 20, and the northeast quarter and the west half of section 29?

A. Yes, sir.

Q. Township 129, range 47?

A. Yes, sir.

Q. How long have you farmed that land?

A. Since I started to farm it in the year 1907. I started plowing there in the fall of 1906.

Q. That is all your land?

A. Well no, I didn't buy all of that land at that time. I only bought the northeast quarter and the west half of the west half and the southeast quarter of the southwest quarter at that time.

Q. You- home place is on section 20?

A. No, my home place was on the west half of the west half of 29 at that time.

2349 Q. Have you lived either on the portion of section 20 that you described or on what you described as the home place on 29 ever since?

A. I lived on 29 for three years until the fall of 1909.

Q. And then where did you live?

A. Then I moved over on section 20.

Q. How long have you lived there?

A. 1909 to 1917—it would be eight years this fall.

Q. Before that what was your business and where did you live before that time?

A. I lived in Illinois.

Q. Farm down in Illinois?

A. Well, farming was my principal profession, yes.

Q. You were part of the summer at Blackmer station?

A. Yes, I moved out here the 16th of June, 1906.

Q. Now in the year 1915 were these lands that you have described overflowed by water?

A. Some of them were, yes.

Q. Describe the extent of the overflow on these lands in the year 1915?

A. Well, my land was flooded to the extent of 125 acres anyway.

Q. About 125 acres of the land you have described?

A. Yes.

Q. What crop did you put in on these lands in 1915?

A. Wheat 95 acres, oats 24 acres, barley 40 acres, corn 124 acres, potatoes 4 acres, clover 50 acres, alfalfa 10 acres, hay 45 acres, pasture 94 acres, house lot 10 acres, road 12 acres, and that draw that goes through my field I figured eight acres.

2350 Q. How many acres altogether in your farm?

A. 520 acres.

Q. These are the crops you put in in that year 1915.

A. Yes.

Q. Did you suffer loss of crops in the year 1915 by reason of flood waters?

A. Yes, sir.

Q. Some portion of these crops you have described that you put in in the year 1915?

A. Yes, sir.

Q. Have you computed the damage that was sustained to these crops in the year 1915 at the time that the flood conditions existed and the value of the same?

A. Yes.

Q. State it.

A. Four acres of wheat, 25 bushel to the acre, I figured at 80 cents a bushel net—I figured loss of harvesting, and threshing was out of that—I figured eighty cents net a fair price for it—$80.00; then I figured 4½ acres of wheat, 16 bushel to the acre, same price, $55.60. Alfalfa, 5¾ acres, at $10 an acre, $57.50. Pasture, 7½ acres at $2.50 an acre, $18.75. Pasture 12 acres at $2.50 an acre, $30.00. Corn ground, 24 acres at $10 an acre in the field less the cost of raising the corn, $4.75, leaves a net loss of $5.25 per acre, which is $126. Corn, 25 acres, at $10 an acre, $250. That corn was raised and cultivated. Corn, four acres, at $10 an acre, $40.

2351 Clover, 15 acres, $6.00 an acre, $90.00. Wild hay, 15 acres at $3.00 an acre, $45.00. That makes a total of $792.85 for 1915.

Q. This land you farmed yourself in 1915?

A. Yes, sir.

Q. In the computations you have made have you taken out all the times of expense for harvesting, threshing and marketing the crops involved as you have described them?

A. Yes, sir.

Q. Considering your compilation the market price of the different cereals you have named, that is wheat and corn at the usual time of marketing?

A. Yes, sir, as near as I could.

Q. And that is the computation as you have made it and stated it in the evidence, aggregating $792.85, the value of the crop so destroyed on these lands in the year 1915 at the time they were destroyed by these flood conditions?

A. Yes, sir.

Q. Have you made a computation for the year 1916?

A. Yes, sir.

Q. Of the value of the rental returns for such land in the year 1916, or the crops to be produced for the year 1916?

A. The crops to be produced.

Q. State it?

Mr. Palmer: Objected to as not the proper measure of damages.

A. Corn, 50 acres—well, I figured the corn $15 net after the expense is taken out. I figured the corn was worth $19.75 an acre in the field and the expense of raising is $4.75 per acre.
2352 That leaves $15 net, $750. 33 acres of corn at the same price would be $495. 10 acres of corn at the same price would be $150. Those are places where I had intended to put corn in that year. Wild hay, 33 acres, $3.00 an acre, $99. Alfalfa, 6¾ acres, $20 an acre, $135. 14 acres pasture, at $3.00 an acre, $42. 7½ acres pasture at $3.00 an acre, $22.50. Fence damage, 129 rods at 29½ cts. a rod, $97.05, labor $36. These are all the items for 1916.

Q. Now in 1916 how much of these lands were flooded by overflow waters from the Bois de Sioux river?

Mr. Palmer: Objected to as the witness has not shown himself competent to answer.

A. In the neighborhood of 150 acres.

Q. Was there more or less land overflowed in 1916 than there was in 1915?

A. More.

Q. About when did you have these flood waters in 1916 and how long did they continue?

A. They started in—the snow went off in the spring and the water practically got off the work ground and got into the draw, as we call it, and then, in a week or two weeks time, probably a week or ten days, the draw started to rise and it gradually spread over the work ground and it raised until it struck the heighth that I said, and it continued there for the largest portion of the summer or very near it.

Q. Did you work any part of this 150 acres in the year 1916?

A. No, sir.

2353 Q. Put any of that into crop?

A. No, sir.

Q. This 150 acres that you have mentioned, were they covered by water, or a portion of them covered with water in 1915?

A. That I mentioned in 1916?

Q. Yes.

A. Yes, sir.

Q. The same acres?

A. Well not quite as many acres.

Q. Now in 1916 had you put into crop any portion of this 150 acres?

A. No, sir.

Q. Why not?

A. I couldn't on account of the water.

Q. Then this 150 acres that you have described as flooded by waters in the year 1916, none of that was sown to crops?

A. No, sir.

Q. Was this wild hay that you have mentioned in the year 1916 growing at the time these waters came on?

A. Well, it has every chance in the world to grow until the water came on and covered it.

Q. What shape was this alfalfa in?

A. There wasn't a spear of it left. It got killed the summer before in 1915.

Q. This alfalfa land was killed by the floods of 1915?

A. Yes, sir.

Q. That is the roots?

A. Yes, sir.

2354 Q. How about your pasture in 1916?

A. That was killed also, that is to the extent that it was flooded in 1915, and then in 1916 it was flooded a little worse and killed a little more of it.

Q. So in 1916 some of your pasture land had already been killed by the floods of 1915?

A. Yes, sir.

Q. And some additional was killed and covered by the floods of 1916?

A. Yes, sir.

Q. Now in figuring out the damages sustained in the year 1916 you have taken, as I understand, the corn ground that you would have put into corn?

A. Yes, sir.

Q. How did you ascertain the returns that would have accrued in the year 1916 on this corn ground?

A. Well I figured the yield at 25 bushels to the acre, at 75 cents a bushel.

Q. I understand that, but did you have any corn in in 1916?

A. No, sir.

Q. Was there any corn ground in your neighborhood in 1916?

A. Why there was corn ground in the neighborhood.

Q. On the lands not flooded?

A. Yes, sir.

Q. And did you see such corn growing?

A. Yes, sir, I knew of it and I think I seen it.

Q. And you knew in what condition and what return the corn gave in the year 1916, did you?

A. Yes, sir.

2355 Q. And did you figure it on the basis of what the year 1916 was for corn on lands in that vicinity?

A. Yes, sir.

Q. Now for 1916 your total computation not including the fence and the labor of restoration is how much? Have you computed that separately?

A. No, I haven't.

Q. What is the total, including the fence and labor restoring it?

A. $1,862.55.

Q. And that included fence, some 129 rods, and the labor restoring same where it was injured and damaged in the year 1916?

A. The injury and damage during the whole of the flood.

Q. Of 1915 and 1916?

A. Yes, sir.

Q. Then if I understand you correctly, the computation you have made excluding the fence and labor of restoring it for the year 1916, is what the crop returns would have been if these flood conditions on this particular land, as you have described it was flooded, had not existed in the year 1916?

A. Yes, sir.

Q. Are you familiar with the crop rental division plan customary in this community where farms are operated and put in by tenants under cropper's contracts?

A. Why to a certain extent, I am.

Q. You have heard the witnesses describe in the testimony the method and manner of division of such rental basis?

A. Yes, sir.

2356 Q. Now will you state on such plan what would be the rental value of these lands so injured by floods in the year 1916, computing it under that cropper's contract plan. Take the corn first?

A. $5.75 per acre.

Q. 93 acres at $5.75?

A. Yes, sir, $534.75.

Q. And the wild hay land?

A. The rental value of that I have stated, $3.00 an acre.

Q. That is the rental value of it?

A. Yes, sir.

Q. And how about pasture figured at $3.00 an acre?

A. That is what I figured it would rent for.

Q. And then the alfalfa—what would be the rental value of that?

A. I don't know anything about that.

Q. Would the tenant get one half of the alfalfa?

A. I wouldn't know; in fact I don't know as there is any alfalfa on any rented land anyway.

Q. On the half plan the tenant would get one-half of it if you rented it of halves to him?

A. Possibly.

Q. That would leave $76.50 as the rental value of the alfalfa under the plan, would it not?

A. I think so.

Q. Now have you made computation for the year 1917?

A. Yes, sir.
Q. Will you state it please?
A. Wild hay, 20 acres, at $3.00 an acre, $60. Pasture
2357 7½ acres at $3.00 an acre, $22.50. Wheat 39 acres at $11.16 an acre net, total of $435.24; alfalfa 6¾ acres at $20 an acre $135; wheat 20 acres 4 bushel per acre a net loss of $7.60 per acre, $152; loss of trees $100. Total $904.74.
Q. What trees did you lose?
A. Lost a wind break over there on the other place. I didn't lose every tree in the windbreak, but lost nearly all of them, or at least sickened them all.
Q. What kind of trees?
A. Cotton wood trees.
Q. Did the water cover the roots or any part of them in the year 1915?
A. It covered the ground where they stood.
Q. And likewise in 1916?
A. Yes, sir.
Q. And in 1917?
A. Well, in 1917 it didn't cover it all season.
Q. A portion of the season?
A. Yes, sir, but the trees was dead before that.
Q. How did you compute this loss of $100?
A. Well, I figured the trees was worth that to me, and in fact they are worth more because they are a wind break for stock and choring on that place.
Q. Now in 1917, did you produce any crops on these lands that you have just computed a loss upon for 1917?
A. No, sir.
Q. Why?
A. Well, because you couldn't get on them in time to get a crop in.
Q. That is on account of the conditions existing by reason of flood waters in 1915 and 1916?
2358 A. Yes, sir.
Q. And particularly in 1917?
A. Yes, sir.
Q. You have figured a wheat loss of 4 bushel per acre?
A. I figured that wheat loss in this way. In the fall of 1916 I plowed that ground, and it was so wet that in fact you couldn't plow it. It was just like a big field of muck. It would push off you- plow a cake about four or six feet, and sometimes you would plow a cake up and have to spend a half or a *a* quarter of an hour digging mud out of your plow, and continued that way until we got the field plowed. We finally finished with a sulky. We couldn't finish with a gang. And then this land produced less than 4 bushel of wheat to the acre in 1917, while some ground that I had that was plowed in better condition in the year 1916 and some wheat on my neighbors right across the road from mine—mine yielded 9 bushel per acre and my neighbor's yielded ten, so I figured this field of wheat at 9 bushel to the acre, leaving a difference between 5 and 9—which

I figured 5 but it wasn't 5, but was a little over 4 in 1917 that I realized out of that wheat—and I figured 4 bushel on that particular piece of wheat loss.

Q. Now that is in the year 1917?

A. Yes, sir.

Q. And is in relation to the same wheat ground that you had into wheat on which wheat was harvested and marketed?

A. Yes, sir.

Q. In 1917?

A. Yes, sir, well, it ain't marketed, but it is threshed, and the market value is $2.04.

2359 Q. You have made this compilation from other wheat that you have raised on ground in 1917 that wasn't covered with water by these flood conditions?

A. Yes, sir.

Q. Now for computing in 1917 the rental value the same as you did for 1916 on the wheat, 39 acres at $11.16 net, what would be the rental value of the premises for the year 1917 covering the wheat?

A. $8.79 per acre.

Q. The rental value of these premises for the year 1917 on the wheat land would be $8.79 per acre for 39 acres?

A. Yes, sir, $343.81.

Q. And the other computations would be made on the same basis as in 1916, taking the rental value as far as the hay and pasture is concerned?

A. Yes, sir.

Q. Now, Mr. Sauter, describe generally the character of this land that you farmed, as to its fertility, productivity and soil?

A. Well, the soil is good, and this low ground in a great many years will produce more than any other land I got.

Q. Now describe the ground that you call low ground that has been subject to overflow?

A. Well, I wouldn't say it is low, but it is right next to this draw. Of course it was overflowed in 1915, 1916 and 1917.

Q. Is there a draw running through your farm?

A. Yes, sir.

Q. Did you plow over it?

A. I haven't been in the custom of plowing over it, but I

2360 don't know any reason why I couldn't most of the years.

Q. Is this draw low and marshy?

A. No, sir, it isn't. It is dry most years.

Q. Some years it has water in?

A. Yes, sir.

Q. How much of this total acreage you have described in the evidence here was broken up of the 520 acres?

A. Well, all but that draw and possibly 45 acres of hay ground. There is a little plat on the northeast quarter in hay ground.

Q. Now since you have farmed these lands have you raised and produced a crop on these lands every year up to the year 1915?

A. Yes, sir, all but one year when I had in the neighborhood of four acres of corn drowned out on me.

Q. What year was that?

A. That was in 1909 or 1908, I am not sure. The time we had what you call a cloud burst, I should judge. The corn was just planted recently and it wasn't all up yet, and we had seven inches of rainfall from six o'clock one evening until the next morning, and of course there was corn planted on this 24 acres of ground that I figured in 1916 and some of that corn didn't come up, but what came up made corn.

Q. Even that year?

A. Yes, sir.

Q. Now with that exception have you raised, produced and been able to cultivate, farm and till these lands during the time you have farmed it every year up until 1915?

A. Yes, sir.

Q. Have you ever seen a condition of flood such as you experienced in 1915 and 1916 and 1917 on this territory during
2361 the time you have been there?

A. No, sir.

Q. Now what was the market value of these lands owned by you immediately prior to the existence of these flood conditions?

A. I valued my land at $90 per acre.

Q. Have you improvements on it?

A. Yes, sir.

Q. State the improvements?

A. Well, I have a house on it 16 x 24, and 14 foot addition, I guess what you call a story and a half house. It is not a full upper story. There is some porches on it and one thing another. Cellar under it. I figured that at $1,800. It is in good state of repair and good coat of paint on it. That is the condition of all my buildings as far as that is concerned. I have got a garage 16 x 32, match flooring, sides, shingle roof, and chimney in it for wash room, milk house and like of that. Value $150. A machine shed there 24 x 32 about 12 feet high, same kind of flooring and shingled roof, painted on three sides, $150. Granary 18 x 26, 14 foot posts. I have a machine shed side of it, 14 feet wide made out of boards and tar papered, and then siding and painted and shingled, $500. Corn cribs—I have a double crib 26 feet wide *and* x 32 feet, made out of fence boards that are beveled underneath and on top and painted and shingled. $400. Hog house 26 x 40. The outside posts are six feet high, and it is shingled also, and same kind of flooring and painted. $400. Cattle shed 18 x 32, made out of dress boards and painted and shingled, $150; barn 32 x 64, 14 foot posts, drop siding and tar paper and siding, shingled and painted, $1,800. Wind mill and well and pipes to tank, $300. Grove and orchard $500.
2362 Fence on place, that is woven wire fence 1,540 rods—I figured that at 76 cents a rod makes—well, I didn't figure all the fence—I omitted 80 rods and omitted some of the line fence. I figured 1,460 rods at 76 cents makes a total of $1,109.60. Hen house $200. That is boarded and sided and tar papered and shingled the buildings over at the other place with the grove I estimated them at $2,000.

Q. Now what is the market value of these lands after these flood conditions of 1915, 1916 and 1917?

A. Well, I figure the depreciation on that land in the neighborhood of 50 per cent.

Q. In the market value?

A. Yes, sir.

Q. Mr. Sauter, what is the cost of restoring these lands so flooded to their former condition? By this I mean to include and consider the damaging effect of these floods on the arability and fertility of the flooded lands used for agricultural purposes, the damaging effect of having water standing on these lands and destroying the crops and causing a growth of weeds and cat-tails and things of that sort on it?

A. It would be almost impossible to figure it.

Q. It is something, isn't it?

A. Yes, sir, but it is quite hard to get at.

Q. You have farmed quite a number of years and know something of what it costs to plow and know somewhat of the extent of the damaging effect of floods standing on your lands?

A. I figure the price of plowing $1.50 an acre, but the way I plowed some of this land and tried to get it onto crop last spring, I don't know if I could plow it for $2.50 an acre and make any money on it.

Q. What would you say would be the damage occasioned
2363 — this flood?

A. The effect is this. We tried some of that ground in 1917 after the flood went off, about the middle of June, I should judge. We started plowing the vicinity of this draw where the ground was overflowed and of course we plowed those cat-tails down, and the ground was wet, and the boys would plug up with their plows and dig around until they got out again and start in and plow again and follow around like that and didn't get much done, and then after they had it plowed they dragged it, aiming to hold the moisture, but the drag didn't take*n* a hold of the ground. The ground didn't plow mellow and consequently we sowed the seed and the seed didn't germinate. The minute the sun struck that ground it got hard and dry and there weren't any of the seed that would germinate*d* in it until we got a rain, and we didn't get the rain. If we couldn't plow, and being we did continue plowing we couldn't get a crop on what we did plow, and so we lost the crop like that on nearly a 100 acres, practically all, but not quite. I did lose thirty acres of buckwheat entirely.

Q. It has been testified here by some witnesses that the damage in this regard is as much as $5.00 per acre in restoring said lands. What would be your opinion in that re*agr*d?

A. Well, I think I sustained a loss of all of that on this land that I put in and tried to raise a crop and didn't realize anything on.

Q. (Question repeated.) Would you figure $5.00 an acre for the damage for restoring these lands to their former condition was excessive or reasonable?

A. Well, as near as I could tell from my experience it would be worth that much.

Q. It would cost that much?
2364 A. Yes, sir.

Cross-examination.

By Mr. Palmer:

Q. Have you contributed toward this fund that has been spoken of here for the expense of carrying on this suit by the state of North Dakota against the State of Minnesota?
A. Yes, sir.
Q. Did you make such a contribution with the expectation and understanding that if a recovery was had by the State of North Dakota against the State of Minnesota that you would receive from the state of North Dakota the amount of your damages as stated by you here?
A. Why I expected to receive the damage.
Q. From the state of North Dakota?
A. Well, I couldn't say that. I wasn't thoroughly informed on that.
Q. You say that you expected to receive those damages?
A. Yes, sir.
Q. From whom?

Mr. Bronson: Objected to as it makes no difference who he expected to receive it from, not proper cross-examination.

A. Well, I expected it from the state all right.
Q. The state of North Dakota?
A. Yes, sir.
Q. Which of this land did you purchase in 1906?
A. What is known as the Stelton farm on the map, the southeast quarter of the southwest quarter of 20, and the east half of the northwest and the northeast of the southwest quarter of 29—160 acres.
2365 Q. What part of 1906 did you purchase this?
A. I think in October.
Q. What did you pay for it?
A. Six thousand dollars, $37.50 an acre.
Q. And you think in the eight years from 1906 to 1914 that this land had a rise of nearly three-fold in value that is from $37.50 an acre to $90 an acre?
A. Yes, sir. Well, it is not three-fold either.
Q. Well, it is the difference between $37.50 and $90?
A. Yes.
Q. Did the land in this immediate neighborhood have an equal rise in value during that period?
A. I think so.
Q. Was there any water on any part of this land in 1906?
A. I didn't notice any water outside of that draw, as I mentioned to you before.
Q. That had water in it?

A. Yes, sir.
Q. And in the spring of 1907, did the land have water upon it?
A. I don't remember that it did. I couldn't definitely say. I don't remember that it did.
Q. Was the water in this draw in the spring of 1907?
A. Well, probably there was but I couldn't say definitely. There was not anything there that would cause me to remember it that I know of.

2366 Q. In the year 1908, was there water upon this land?
A. Well, there was water in the draw I think most of the spring.
Q. Now, 1910, 1911 and 1912, were very dry years, were they not, Mr. Sauter?
A. Well, I don't really remember, I couldn't definitely say as to that.
Q. You had very good crops upon those lands all those years, did you not?
A. Well, there was one year we had a rust year. I don't exactly recall what year it was, but outside of that I think we had pretty good crops.
Q. The year you had rust you had a very poor crop?
A. Yes, sir.
Q. Is rust caused by wet conditions?
A. Well, I couldn't say.
Q. Did you have it in the dry years similar to the past season?
A. Yes, I think so.
Q. You think the amount of precipitation has nothing to do with it?
A. I couldn't say what causes rust.
Q. Is rust quite a prevalent condition through this particular section of the country?
A. Why, I couldn't say that it is.
Q. *Bothess* a good many years?
A. No, not a good many years. I think two years is all that they ever had it here. I heard they had it one year before I came here, and this one year I was here. That is all I ever heard of.

2367 Q. When did you buy the balance of this land described as the south half of the southwest of 29, the northwest of the southwest of 29, and the west half of the northwest of 29, and the northeast quarter?
A. I bought that in 1902.
Q. All of it?
A. Yes, I bargained for it then and we drawed the papers up in the spring of 1903.
Q. That was before you moved out here?
A. Yes, sir.
Q. What did you pay for that land?
A. $29.00 an acre.
Q. And you think in the twelve years from 1902 to 1914, that that land increased more than three-fold in value?
A. Not more than three-fold.

Q. Well, it went up from $29 to $90 an acre—you think it had that increase in value?

A. I think it had that increase what I told you.

Q. What caused this remarkable increase in value?

A. Well, part of it due to the raise of land and part to the improvement that is on it.

Q. Did you put any more improvements on the land described?

A. Well, I put on the improvements on the other land, but it applies to all the land. The improvement applies to all the land, as I am farming it all.

Q. Now this entire farm of yours has this draw running through the middle of it?

A. Yes, sir.

Q. About what is the width of that draw or ravine?

A. Why, four rods wide, four to six rods.

2368 Q. About what is the depth?

A. From a foot to eighteen inches.

Q. That is the westerly outlet of Traverse Lake across this area, is it not?

A. Well, no I couldn't say that it is. The lake has to get extremely high before any water goes through there.

Q. But when the lake does get extremely high then this draw across this land forms the westerly outlet, does it not?

A. There is water from the lake passes through that to the north.

Q. There is just westerly of your buildings on this 40 in Section 20 a bridge across that draw, is there not?

A. Yes, sir.

Q. A steel bridge?

A. Yes, sir.

Q. What is the span?

A. The span is 24 feet.

Q. What is the clear space?

A. Possibly four or five feet.

Q. That bridge was put there to accommodate the flow of water?

A. To accommodate that flood.

Q. From this western outlet of Lake Traverse?

A. Yes, sir.

Mr. Palmer:

Q. Now, in addition to this western outlet of Traverse Lake there comes in from the west onto the westerly side of your land in 29 a natural waterway or ravine, dosen't there?

A. Yes, sir.

2369 Q. There is another bridge across that ravine some 60 to 80 rods westerly of the first bridge that I mentioned is there not?

A. Yes, sir.

Q. What is the span of that bridge?

A. About 10 feet in the clear.

Q. And what is the depth below?

A. Possibly 2 feet.

Q. And I apprehend that it was put in there to accommodate the flow of the water from this ravine in from the west?

A. Yes, sir.

Q. About how wide is that ravine that comes in from the west where it enters your land on 29?

A. Well, it is about 4 rods on the upper——

Q. How deep?

A. 18 inches, 2 feet.

Q. That brings in the drainage from the higher land westerly of your land?

A. Yes, sir.

Q. The season of 1915, beginning about with the month of May, was one of exceptionally heavy rainfall, wasn't it?

A. No.

Q. Wasn't any rain?

A. I don't say there wasn't any rain but it was not exceptionally heavy.

Q. It was not exceptionally heavy?

A. No, sir.

Q. And your recollection is very clear on that?

2370 A. Yes, sir.

Q. In 1916?

A. 1916 we had more rain that we had in 1915.

Q. Did you have more rain in 1916 than in any other year you know of since you have been here?

A. In 1916?

Q. Yes, sir.

A. No, I don't think we did.

Q. What other year did you have as much rain as you had in 1916?

A. I think we had just as much rain that year we had that heavy rain that night as we did in 1916, if I ain't mistaken; of course I can't tell for certain.

Q. Were not the conditions of farming lands exceedingly wet all through this country?

A. Yes, sir.

Q. Surrounding territory in 1916?

A. Yes, sir, they were.

Q. Likewise in the fall of 1915?

A. Well, not all fall, they was part of the fall where they was wet.

Q. The early fall?

A. No, rather the late fall I should judge.

Q. Now, in 1916, and in 1915, where did this water come from that flooded your land?

A. In 1915 and 1917?

Q. Yes, sir.

A. I think the principal part of it came from that flood, Mustinka river.

Q. From what flood?

2371 A. Mustinka, Lake Traverse.

Q. Mustinka, Lake Traverse where is that?

A. The dredging of the Mustinka river into Lake Traverse and we got it from Lake Traverse. It empties into Lake Traverse and we got it from Lake Traverse.

Q. You have no personal knowledge of that, Mr. Sauter, have you?

A. Yes, sir, I think I have.

Q. Are you an expert engineer?

Mr. Pinkney: Give the witness a chance to finish his answer.

Mr. Palmer:

Q. Just go on and explain it from an expert engineering standpoint? Give your actual personal knowledge?

A. Well, I know this much about it. They dredged the Mustinka river and they dredged a large territory of land in Minnesota into this Mustinka river through this dredge and this dredge brings the water into Lake Traverse, and it didn't only start in 1915 but it started in the fall of 1914, and it didn't get high enough to hurt anybody.

Q. Then it was the rise in Lake Traverse and the water coming up through this western outlet of it that flooded your land?

A. Yes, sir.

Q. Together with the water which came in from this ravine westerly of your land?

Mr. Pinkney: He hasn't stated that; object to the form of the question.

A. I will say this, that the slough is full of water and that when the water come in from the westerly place it had no place
2372 to go to.

Q. And it simply spread out on your land?

A. It spread out all over just the same—well, if the slough hadn't been full of water as it was, it had the draw to run in and wouldn't have done the damage.

Q. You know where the Bois de Sioux river is some two miles and a half easterly of your place?

A. Yes, sir.

Q. You say the overflow from the river came over onto your land in 1915?

A. It went entirely over the whole flat.

Q. What did?

A. The water did.

Q. Well, I say, did the overflow from the Bois de Sioux river come over onto your land in the years 1915 and 1916?

A. Well, it come up from Lake Traverse, the water that would be in the Bois de Sioux wouldn't come on my field, but there was the other water, the Bois de Sioux wasn't able to carry the water.

Q. Consequently, it came up this westerly outlet?

A. Yes, sir.

Q. And that water and the water from this western branch came onto your land, Mr. Sauter?

A. Well, I already answered the question, about the western water.

Q. Has there been any ditching operations westerly of your land into this ravine that comes in there?

A. Yes, sir.

Q. And where have those been carried on?

A. Well, there is a couple of ditches coming up the road-
2373 side right straight west of my place across the ridge there.

Q. Put in there across the ridge?

A. Yes, sir.

Q. How large are those ditches?

A. Oh, they are, the water in them runs about possibly two or three feet wide.

Q. How wide are the ditches then?

A. Well, the ditches are wider on top, the ditches are deep and the part of the ditch that carries the water is narrow. Of course, the ditch naturally slopes to the top but it don't carry full of water.

Q. Well, they are deep ditches.

A. Yes, they are five feet deep or six probably.

Q. And there are two of them there?

A. Yes, sir.

Q. How long have they been there?

A. One of them has been there quite a while, it has been as long as I can remember, I couldn't say either but they was there a long time.

Q. They were put in there before 1915?

A. Yes, sir.

Q. And were put in for the purpose of drainage of the flat area to the west of this?

A. Yes, sir.

Q. Are those public ditches or private ditches?

A. They are private ditches, I have an idea, I don't know, they are on the public highway; whether they are public ditches or private ditches, I couldn't say.

Q. They were put in to drain both the public highway and the adjacent land, I take it?

2374 A. Yes, sir.

Q. Was 1916, a better crop year than 1915?

A. No, sir.

Q. Was it a poorer crop year?

A. Yes, sir.

Q. About what part of an average crop was produced in your locality in 1915 on unflooded lands?

A. It varied from 15 to 25 bushels, 12 bushels to 25, probably.

Q. Would you say it was a full average crop, the crop of 1915, in your locality?

A. Yes, sir, I think so.

Q. Now, in 1916?

A. In 1916, we had a poor crop.

Q. Well, part of an average crop did you have?

A. I will have to withdraw that question from 1915, 1915 was

more than an average crop when it comes to talk about an average crop.

Q. 1915, was better than the average crop?

A. Yes, sir.

Q. And 1916, was about what part of an average crop?

A. Well, it was no average crop, it wasn't even half of an average crop.

Q. It wasn't anywheres near half of an average crop?

A. Well, it wasn't half of an average crop.

Q. You say you had 125 acres flooded in 1915?

A. Yes, sir.

Q. And on that 125 acres you figured that you had a loss of $792?

2375 A. Yes, sir.

Q. And I presume you estimated that quite high on account of there being an exceptionally good crop that year?

A. No, sir.

Q. You figured it on the basis of a very good crop did you not?

A I figured it on the basis of land adjoining it.

Q. Well, I say, you figured it on the basis of a very good crop because the land adjoining had a very good crop?

A. Yes, sir.

Q. Now, in 1916, you say you had 150 acres flooded?

A. Yes, sir.

Q. That is, you had 25 more acres flooded than you did in 1915?

A. Yes, sir.

Q. Now you figured your loss on that 150 acres, on a basis of a poor crop because there was a poor crop on the surrounding lands?

A. I didn't figure any crop that was a poor crop that year; I didn't figure any wheat or oats or flax.

Q. You figured everything in the year 1916, that was a good crop did you?

A. I figured just—I figured corn where I intended to put corn for that year.

Q. All right. You figured——

A. And corn is the only thing I figured outside of the hay land and pasture.

Q. And that was a fair crop in 1916?

A. Yes, sir, where they had corn, they had good corn.

2376 Q. Where you had good corn, you had good corn?

A. And it was a good price too, and that is what raised the value of the acreage to where it is.

Q. Where you had good corn that year you had good corn and where you had poor corn you had poor corn?

A. Where the corn was on a reasonably dry piece of land and was put in in time, they had good corn.

Q. 1916, was a good corn year?

A. Yes, sir, some folks had good corn.

Q. And some folks had poor corn?

A. Yes, sir, possibly.

Q. In 1916, figuring on the basis of a poor year——

A. Well, now, I will take some of that back, I figured that corn on a basis of 25 bushels, that is not a big corn crop; 50 bushels is a good corn crop in this country.

Q. You figured your damage for 1916, on 150 acres $1,862, that is about two and one half times as much as you figured on 125 acres in 1915?

Mr. Pinkney: That is not a correct statement of the witness that included the fence.

Mr. Palmer:

Q. Yes, that included the fence. I will change that to $1,629, more than twice as much as you figured on 125 acres in 1915?

A. Yes, sir.

Q. What was the fair rental value of improved land in this locality in the year 1916, cash rental; that is, if you had gone out to one of your neighbors and rented improved land? What could you have rented it for per acre?

A. Probably on a third basis.

2377 Q. I mean for cash rent.

A. Well, probably $3 an acre.

Q. In your damages, you charge $15 an acre five times as much as you could have gone out and rented lands for?

A. Yes, sir.

Q. And on alfalfa ground you charge for that year $20 an acre?

A. Yes, sir.

Q. In 1917, what was the fair rental cash value of improved lands in your locality?

A. Well, they would rent on half basis, I suppose.

Q. Cash rent?

A. Cash rent, I don't know but one farm that was rented for cash, it was rented for $3 an acre as near as I can tell.

Q. In your estimate of damages here you charge $11.16 an acre, about four times the cash rental value?

A. Yes, sir; I didn't figure what it was I just took your word for it.

Q. You have it here $11.16?

A. Yes, I have it here some place too, come to think of it.

Q. You think, Mr. Sauter, that your damages for those three years amount to between $3,600 and $3,700 that you ought to have?

A. I didn't figure it altogether, I expect it is about that; yes, sir, I do.

Q. And then you think you ought to have $45 an acre on the land in general depreciation in its value?

2378 A. Yes, sir.

Q. That would be $23,400; and then you ought to have $5 an acre for restoring the land that had water on it, to its former state of cultivation, do you?

A. Well, I didn't figure that in, I didn't charge you for that, I didn't charge you up for that.

Q. Don't you think you ought to have that?

A. I don't say that, I said it was worth that.

Q. And then you ought to have the land itself, of course?

A. Well, there was nothing mentioned about that, the question was asked how much this land depreciated.

Q. And you think it went right down in 1915 and 1916 one half of the whole 520 acres?

A. Yes, I did, I think so, that is providing those present conditions, the present flood conditions continue—under the flood conditions, I mean.

Q. That is, if you have another year like 1916 you will have your farm in the same condition as it was in 1916?

A. Yes, sir, the chances are we would.

Q. You think we will?

A. I think we will have flood conditions unless we get an exceptionally dry, and then possibly those flood conditions wouldn't arise but it might arise the following year again.

Q. At the time that you purchased this land in 1902, did you examine the government plat to see whether any of it was marked swamp or marsh land?

A. No, sir.

Q. Isn't it true that nearly all of the south eighty of this land is marked on the government map as swamp and marsh land?

2379 A. I don't know.

Q. Would you say that it is not low lying land?

A. Well, I will say it is not marsh land.

Q. It is not high land either, is it?

A. Well, it is land that will take care of itself if the water isn't forced onto it.

Q. The forty acres in section 20, did you ever look at the government plat and see whether that is designated as marsh? That is where your buildings are.

A. No, I haven't looked at it, I haven't looked at the plat.

Q. Isn't it true that the greater part of that 40 acres with the exception of where you- buildings stand is low lying land?

A. Yes, it might be low lying but it is not marsh land.

Q. It is subject to overflow from the water when the waters are high?

A. When the waters are extremely high like they *was* in 1915 and 1916.

Q. And that low lying land subject to overflow extends down into the north eighty on the northwest quarter of 29, doesn't it?

A. There is a draw runs clear through the full length of the field.

Q. Does that spread out, widen out there in quite an area in the north part of that eighty?

A. No, sir.

Q. You mentioned these buildings and their value.

2380 A. Yes, sir.

Q. Did the water reach any part of these buildings?

A. No, sir.

Q. Was there any injury whatever to those buildings by reason of these waters?

A. No, sir.

Redirect examination.

By Mr. Bronson:

Q. Mr. Sauter, counsel has asked you a question concerning your contribution and your desire to recover the damages that you have sustained. I will ask you the general question whether or not you do not expect the state of North Dakota to protect you in your property rights as a citizen of North Dakota?

A. Yes, sir.

Q. And whether or not you do not expect to receive if there is anything to be received, such damages in a proper way as the Courts of Justice may determine and as the State of North Dakota may determine or such as the State of North Dakota in sovereign right and authority may determine you are entitled to?

A. Yes, sir.

Q. The floods that existed in the years 1915 and 1916, were waters that came from Lake Traverse?

A. Yes, sir, as near as I can tell.

Q. Land that is flooded with water, its value is affected, isn't it?

A. Yes, sir.

2381 Q. And lands that were flooded in the years 1915 and 1916 as they were naturally are affected as far as their values are concerned?

A. Yes, sir.

Q. In other words, you cannot farm farm lands when they are covered with water?

A. No, sir.

Q. You have spoken about some ravines, one or two that come down from the west towards your place?

A. Yes, sir.

Q. Natural ravines?

A. Yes, sir.

Q. Those are natural ravines?

A. Yes, sir. Well, there was a little water brought in from the west side there, as I said, a little narrow stream running through that ridge that was dug through there along the roadside.

Q. Not a county ditch?

A. No, sir.

Q. The only county ditch that exists from Fairmount clear down to White Rock is that county ditch that goes into the coulie on the Taylor farm?

A. Yes, sir.

Q. That has been there for a great number of years?

A. Yes, sir.

Q. And there is a natural ravine to the northwest of you?

A. Yes, sir.

Q. T[illegible]nes down across the ridge?

A. [illegible] sir.

Q. Been there naturally all these years?

A. Yes, sir.

2382 Q. And across the road there there is a little ditch, isn't there; there has a ditch been dug there, you say?

A. Yes, sir, up along the road east and west.

Q. Does that come down towards your farm?

A. Well, it comes down towards this here coulie that comes down through my farm.

Q. That is a natural coulie?

A. Yes, sir.

Q. Counsel has asked you a question about damages you have sustained in connection with the value of your premises that have been diminished by reason of these flood waters, and I ask you the general question if these flood waters continue to come from Lake Traverse in seasons of rainfall like they have in 1915 and 1916 whether or not your farm will not be depreciated in value just as you have stated?

A. What is that?

Q. If the flood waters come from Lake Traverse and continue to come like they did in 1915 and 1916?

A. Yes, sir.

Q. 1917, has been an exceptionally dry year?

A. Yes, sir, 1917 has been an exceptionally dry year, yes sir.

Q. And you know in your exeprience in farming in all the years you have lived there, you never were bothered with flood waters as in 1915 and 1916 and a portion of 1917?

A. No, sir.

Q. It appear- you were at Blackmer one season and I will ask you whether you have any knowledge as to what extent section 21 or any part of it raised good crops?

2383 A. Well, as near as I can tell there was a crop of flax put in there rather late and it wasn't overly good crop, but there was some crop there, I can't say how much.

Q. What year?

A. I think 1906.

Q. Is the school house located on your land or near your land?

A. There is a school house located near my land, it is in section 20 on the southwest quarter of section 20.

Q. To what extent did the flood waters of 1915 and 1916 affect the operation of that school?

A. Well, it didn't affect the operation of that school, but it did affect the operation of the school in section 28.

Q. That is the southern part of 28?

A. Yes, sir.

Q. Tell briefly what the conditions were?

A. They couldn't have any school there because they couldn't get in there on account of the water.

Q. That is the flood waters come up around the school?

A. They come up between the residences where the children, some of the children are residents and between the school house, so they couldn't get across to the school house to get to school.

Q. Didn't have school there, what year, you say?

A. Between 1916 and 1917.

Q. School season of 1916-1917, you mean?
A. Yes, sir.
Q. What is the school season?
A. It is from, started September 15 runs on nine months
2384 until next spring about June.
Q. That must have happened in 1915 then, too?
A. No, 1915 the water didn't get up until after school was over, practically, I guess.
Q. It was in 1916?
A. 1916 to 1917 was when they didn't have any school there.

Recross-examination.

By Mr. Palmer:

Q. Was the school house damaged at all?
A. No, sir.
Q. The water didn't reach up to the school buildings?
A. No, sir, not up to the school building.

Redirect examination.

By Mr. Bronson:

Q. Are you on the school board there?
A. Yes, sir.
Q. What is the value of the school house?
A. I don't know as I can give you the exact valuation. It is a frame building, 18 x 24, plastered and siding and painted and in a good state of repair, double floor it has got an entry 6 x 8, same condition. It has a coal shed clear across the back, 18 feet long, 6 feet wide, and a foundation about 16 or 18 inches high.

2385 JOSEPH W. GAJER, being sworn in behalf of complainant, testified as follows:

Examined by Mr. Pinkney:

Q. What is you- name?
A. Joseph W. Gajer.
Q. Where do you live?
A. A mile and a half southeast of the town of Fairmount.
Q. What is your business or occupation?
A. Farmer.
Q. Do you — any farms in Fairmount township, Richland County, North Dakota?
A. Yes, sir.
Q. Can you describe them?
A. Yes, sir.
Q. Please do so.
A. Southwest quarter of 33, 130, 47.
Q. What else?

A. East half of west half, southwest quarter of northeast quarter, west half of southeast quarter and lots 1 and 2 section 4, 129, 47. Southeast quarter of northeast quarter and lot 1, section 16, 129, 47.

Q. Comprising in all how many acres?

A. 572.60 acres.

Q. How long have you resided in Fairmount township?

A. Thirty-three years nearly, May 16th was thirty two years.

Q. Where did you live during most of those years?

2386 A. Right here in Fairmount, that is, on the farm.

Q. On this same land or part of it?

A. Yes, that is not all the time, before I was working out as a laborer.

Q. Do you live on any part of this land you have described?

A. I am living on the quarter section in 33.

Q. On the southwest of 33?

A. On the southwest of 33.

Q. How long have you lived on that quarter section?

A. Thirteen years.

Q. During those thirteen years have you farmed and cultivated these lands or any portion of them?

A. Yes, sir.

Q. How much of them?

A. All of them.

Q. Yourself?

A. Myself.

Q. With your hired help?

A. Yes, sir.

Q. And during those years what kind of crops have you raised on these lands, that is, what different kinds of crops?

A. Wheat, oats, barley, corn, flax, potatoes, alfalfa.

Q. Wild and tame hay?

A. Wild and tame hay.

Q. Have you cultivated all of this land you have described during the 13 years you have lived on the southwest of 33?

A. Yes, sir.

Q. And produced crops on them every year all of the lands?

2387 A. Except 1915 when we had the flood.

Q. Up to the year 1915?

A. Yes, sir, up to the year 1915.

Q. Were any of these lands that you have described affected by the flood waters of 1915?

A. They was.

Q. Can you describe the number of acres of land that were overflowed by the flood waters of 1915 that you own?

A. On the southwest of 33?

Q. How many acres were flooded on the southwest of 33 in the year 1915?

A. On this quarter it was somewhere about 40 acres on 33, 44 somewheres near that.

Q. Which will you have it, 40 or 44?

A. 44, or 45.
Q. Lets put it 42 to be sure we are right, will that do?
A. Yes, sir.
Q. Would you say it was safely 42 acres?
A. About 24 acres, I couldn't tell just exactly.
Q. What other lands were flooded down there that you own?
A. The other was all flooded except eight acres.
Q. How many acres in all counting the 42 on 33, that would be 522 acres, wasn't it, all the balance was flooded?
A. About that.
Q. On this land, that is 522 acres that was flooded in the year 1915?

Mr. Palmer: He didn't say there was 522 acres flooded.

2388 Mr. Pinkney:

Q. He said all the balance except 8 acres.
A. All the balance except 8 acres.
Q. That makes 522 acres that was flooded, did you have any crops growing on any of these 522 acres that were flooded in the year 1915? If so, tell what the crops were, where they were located.
A. Southwest 33, I had 40 acres of oats.
Q. 40 acres of oats that were flooded?
A. No, it was 14 acres out of the 40 on 33.
Q. 14 acres of oats flooded?
A. Yes, sir.
Q. Any other grains on the southwest of 33 that were flooded?
A. Oats and corn.
Q. Have corn on 33 that was flooded?

The Commissioner: Just state all the land that there was flooded.

A. 26 acres of corn.

Mr. Pinkney:

Q. On 33?
A. Drowned out on 33 and 12 acres taken away that couldn't be got off for mud.
Q. 12 acres of what?
A. 12 acres of corn. 26 acres was drowned out and 12 acres couldn't be gotten for mud.
Q. Why wasn't that flooded?
A. That was just the same as flooded.
Q. That would make all told 38 acres of corn?
A. Yes, sir.
Q. Was that all on 33, all the crops on 33 you had flooded in 1915? If not, give the others.

2389 A. That is all on 33.
Q. Making all told 52 acres, is that right?
A. 52 acres.

Q. Take your land in section 4, what kind of crops did you have on the lands that you owned in 4?

A. Harvested 8 acres of wheat, 103 acres Durum wheat drowned out.

Q. What else on there drowned out, what other crops?

A. 32 acres of velvet chaff wheat drowned out.

Q. Give us the balance of the crops that you had on that were drowned?

A. 72 acres of barley, 12 acres of flax, 25 acres of pasture 88¾ acres of grass hay.

Q. Tame hay land?

A. Wild hay. 20 acres of tame hay.

Q. Are those all the crops, all the acreage of crops or character of crops that were drowned out by those flood waters on all your lands for the year 1915?

A. All excepting an acre and a quarter of potatoes.

Q. Where were those potatoes?

A. The potatoes was on 33.

Q. Have you any improvements on 33?

A. Yes, sir, I have.

Q. Describe in a general way the kind and character of improvements by way of buildings on it?

A. Got two houses.

Q. Resident houses?

A. Resident houses.

Q. How about the houses that you live in, when was that constructed?

2390 A. 1914.

Q. At what cost?

A. Cost me $4,200, a little bit better.

Q. This house you live in?

A. This house I live in.

Q. You got two houses and what else on 33?

A. Got a granary, one granary, 24 x 16, 10 feet high, barn 56 x 48, 16 feet posts.

Q. What kind of roof?

A. Shingle roof, hip roof. Tool house 36 x 20 and chicken house 30 x 16.

Q. Is that all the buildings?

A. That is all the buildings.

Q. Any fruit trees?

A. 5 acres of fruit trees.

Q. What kind of fruit trees?

A. Apple trees and plum trees.

Q. What are they? Are they good thrifty trees worthy?

A. All except those drowned out with the water.

Q. All good thrifty trees up to the time they were flooded?

A. All good thrifty trees.

Q. How about the improvements on the balance of this land you own; are there any improvements, any buildings?

A. On the southeast quarter, in section 4 there was shade trees,

25 shade trees, and an artesian well. That is all the improvements that is on.

Q. Were these shade trees affected, injured in any way by the flood waters?

A. Shade trees all killed out by the waters.

2391 Q. Did the flood waters drown out your artesian well too?

A. She is there today yet.

Q. But the trees are killed?

A. Trees all killed.

Q. What kind of trees were they?

A. Box elders.

Q. About what age?

A. They was planted 1892.

Q. Where were these trees located?

Mr. Palmer:

Q. Those were not on your home place?

A. That was my former home place, I had the buildings over in there.

Mr. Pinkney:

Q. Just give the description where those trees are located.

A. That was on the east half of northwest quarter.

Q. Of section 4?

A. Of section 4 on the north end by the road.

Q. How many trees do you say were killed there?

A. 25.

Q. About what was their size at the butts? An average?

A. Probably on an average, probably six inches through.

Q. About how high were they?

A. Some of them was about 16 or 18 feet high.

Q. Were they all good thrifty trees up to the flood?

A. All good thrifty trees up to the flood.

Q. Mr. Gajer, did you harvest any crop of wheat in the

2392 year 1915 on any of your lands that were not flooded?

A. I did.

Q. On what lands did you harvest a wheat crop in 1915, on lands that were not flooded?

A. I harvested on 33.

Q. About how many acres?

A. I think it was about 50 acres.

Q. On what land?

A. On 33.

Q. What part of 33?

A. On the northwest corner.

Q. What yield per acre did you get of wheat on that land? How much did you *did* to the acre in the year 1915?

A. 20 bushels and a half.

Q. What was its quality?

A. No. 1, Northern.

Q. How did those lands on which you got that wheat crop in

1915, in section 33 compare with the lands in section 4 where your wheat was drowned out; how did it compare with the lands in section 4 as to wheat producing lands?

A. It was a good deal better wheat than I had in section 4.

Q. What time in the year was it your crop was drowned out in 1915?

A. It was somewhere around the first of July.

Q. What condition was your wheat crop in on these lands in section 4 that was drowned out at the time the flood waters drowned them out?

A. The wheat was breast high all headed out and would
2393 have been harvested in a couple of weeks.

Q. And with respect to your barley?

A. The barley was all headed out.

Q. And would have been harvested in how long?

A. Would have been harvested in about 10 days.

Q. How about the flax?

A. Flax was put in all up and I should judge about six inches high.

Q. What was its promise as to a good crop?

A. Its promise was a good crop.

Q. Have you computed what the value of this wheat crop was that was drowned out at the time it was drowned out?

A. Yes.

Q. You can tell what the value of it was?

A. Total damage 1915, net oats was——

Q. I want the wheat first? And we will get to the oats afterwards. 135 acres of wheat, what was your loss on that, your net loss?

A. 1915, wheat on that land there was 103 acres Durum wheat.

Q. What was its value at the time it was drowned out?

A. At the time it was drowned out it was $1,25 a bushel, I guess.

Q. Mr. Gajer, you had 135 acres of wheat drowned out in 1915, you stated, did you not?

A. Yes, sir.

Q. Now if it averaged 20 bushels an acre, as you say it would average——

A. Averaged 20 and a half bushels.

Q. Let's call it 20, that would be 2700 bushels.

2394 A. Yes.

Q. If the average market price through the marketing season was 95¢ a bushel that would be 95 times 2,700, that would give you $2,585 wouldn't it as the value of that wheat crop?

A. The value of the wheat crop.

Q. What would have been the expense of cutting, threshing and marketing that wheat crop? That 135 acres?

A. Expense of harvesting, twine and shocking is $1.05 an acre.

Q. And then that would be $141.75, wouldn't it?

A. That don't include the threshing, 6 cents a bushel and hauling.

Q. Wait a minute we will get that other first. What does that $1.35 an acre include, what did you include in that $1.35?

A. $1.05 was in here, including harvesting twine and shocking.
Q. $1.05?
A. Yes, sir, not $1.35. 5 cents a bushel for threshing 1 cent for hauling.
Q. That would be 6 cents?
A. Total expenses, $335.50.
Q. How much would that leave as the net value?
A. Leaves $3,123.75.

Mr. Palmer: I have 2,767½ bushels.

Mr. Pinkney:

Q. At how much a bushel did you compute it, Mr. Gajer?
A. I sold my wheat for $1.57.
Q. When did you sell it?
2395 A. Sold it in August 1916.
Q. What was the average price of wheat at the place where you sold wheat between August 15, 1915 and January 1, 1916? It has been testified here that is was about 95 cents.
A. Between 95 cents and a dollar.
Q. Compute it at 95 cents a bushel, what do you find the value of the wheat was?
—. ——.
Q. 2,767½ bushels computed at the rate of 95 cents a bushel would produce $2,629.07, wouldn't it Mr. Gajer?
A. Yes, sir.
Q. Now that is the gross amount. How much do you say is to be deducted from that amount to cover the expense of harvesting, threshing and marketing, how many dollars?
A. $335.50.
Q. That would leave a net value of that crop of wheat standing on the ground at the time it was destroyed of $2,293.57, wouldn't it?
A. Yes, sir.

(Recess is taken until 1:15 p. m. Nov. 8, 1917.)

2396 Hearing resumed at 1:15, pursuant to adjournment, all parties being present.

Direct examination of J. W. GAJER continued.

By Mr. Pinkney:

Q. You testified in the year 1915 that these flood waters destroyed 72 acres of barley crop that you had on your land?
A. Yes, sir.
Q. Will you tell the Court what the value of that 72 acres of barley crop was on your land at the time it was destroyed?
A. $1,140.45.
Q. Now in reaching those figures have you deducted from the

amount given all of the expense of harvesting, threshing and marketing?

A. Yes, sir.

Q. Leaving a net value of $1,140.45?

A. Yes, sir.

Q. You have also testified that you had 12 acres of flax on this flooded land. Will you tell the Court what the value of that 12 acres of flax was as it stood on the lands at the time it was destroyed by these flood waters of 1915?

A. $100.50 net.

Q. Now in reaching that valuation have you taken into consideration and deducted all the items of expense to which you would have been put to market the crop?

A. Yes, sir.

Q. Including the cutting, threshing and harvesting?

A. Yes, sir.

2397 Q. Now what was the value of the 25 acres of pasture land that you said you had destroyed by these floods—what was the value of that crop on the lands at the time they were destroyed?

A. 25 acres of pasture would have been worth $3.50 an acre $87.50.

Q. Is that the value of the pasture land at the time it was destroyed?

A. That was the value.

Q. You also testified you had 80¾ acres of wild hay land that was destroyed by these waters in 1915,—what was the value of this in 1915—what was the value of the crop on this land at the time it was destroyed?

A. $3.00 an acre. $266.25.

Q. You also testified that you had 20 acres of tame hay land destroyed on your land by these flood waters for 1915, what was the value of that crop?

A. $5.00 an acre, $100.

Q. How much was the value of the 1¼ acres of potatoe crop that you had on your land, that is the value at the time they were destroyed?

A. About $125.

Q. $125 for the acre and a quarter?

A. Yes, sir.

Q. Now you have also testified you had 620 rods of fence destroyed by these flood waters. Have you ascertained what it would cost to replace this fence, that number of rods of fence of the same kind and character as was destroyed by these flood waters?

A. $162.30.

2398 Q. How as I understand you that is all of the loss and damage you sustained to the crops or other property by reason of the flood waters of 1915?

A. Yes, sir, except we didn't put in the apple trees yet.

Q. How many apple trees were destroyed?

A. 21.

Q. What did you regard as the value of those apple trees just immediately before they were destroyed by these flood waters?
A. They was worth about $25 apiece.
Q. How old were they?
A. They was set out in 1903.
Q. They were 12 years old then?
A. Yes.
Q. Had they reached the fruit bearing age?
A. When they was 6 years old they was bearing fruit.
Q. Then had been bearing for about 6 years then?
A. Yes, sir.
Q. What was their general condition?
A. Good, healthy, thrifty trees.
Q. They would be worth $525?
A. Yes, sir.
Q. Now in arriving at these net losses or values that you have given on your crops as they stood on these lands just prior to their destruction by these flood waters in the year 1915 what price per bushel did you take, for instance, with respect to the wheat, 135 acres of wheat—at what price per bushel did you figure that?
A. I figured it at 95 cents a bushel.
2399 Q. Was that the prevailing price of wheat in your market at that time?
A. Yes, sir.
Q. Between what period?
A. Between harvesting and the 1st of January following.
Q. Harvesting commences about the 15th of August?
A. Somewheres about there.
Q. How with respect to the barley—what price did you estimate the value of the barley at?
A. At 60 cents a bushel.
Q. Was 60 cents the prevailing market price at your market at the time?
A. Somewheres around there, between 60 and 50.
Q. How with respect to the price at which you computed the loss of flax? Where did you get the price on that?
A. Flax $1.50 a bushel.
Q. Was that the market price of flax?
A. Yes, sir.
Q. At the market at which you sold your grain?
A. Yes, sir.
Q. At what time?
A. That was between threshing time and January 1st following.
Q. Now you computed you- 25 acres of pasture land that was destroyed at $3.50 an acre, you say?
A. Yes, sir.
Q. Why did you fix it at that? Is that the prevailing price?
A. Yes, sir.
2400 Q. That is what pasture land is worth?
A. Yes, sir.

Q. And the wild hay land—88¾ acres—what price per acre did you compute that at?
A. $3 per acre.
Q. Is that the prevailing price for hay land at that time?
A. Yes, sir.
Q. What price did you compute the tame hay land at?
A. $5 per acre.
Q. Is that the prevailing price for tame hay land at that time in your locality?
A. Yes, sir, that and over.
Q. Now the potatoes, at $100 an acre,—how did you reach that valuation?
A. Well, I supposed them to be worth that much.
Q. Was the potato crop matured or anywhere near matured?
A. Well, it was nearly.
Q. At what price per bushel did you compute the probable crop?
—. ——.
Q. How many bushels per acre did you figure?
A. About 200.
Q. And an acre and a quarter?
A. Yes, sir.
Q. Is that about the yield of potatoes in this locality, 200 bushels and over?
A. That is a medium crop.
2401 Q. Now were any of these lands that were flooded in 1915, to which you have testified flooded again in the year 1916?
A. Yes. The water never got off from them.
Q. Were they flooded as much as they were in the year 1915?
A. They were more flooded.
Q. How many acres did you say you had flooded in the year 1916?
A. We had it all flooded except about 70 acres I had left on 33.
Q. How many acres did you say you owned down there?
A. 572 acres and a fraction about.
Q. Well you said you had flooded in 1915, 522 acres. Now you say 1916 it was flooded more than in 1915?
A. Yes, sir.
Q. Then it would be more than 522 acres, wouldn't it?
A. Yes.
Q. How many acres more did you say was flooded in 1916, than was flooded in 1915?
A. Well, I just couldn't tell exactly. We had somewheres around 60 or 70 acres where we got the buildings that wasn't flooded.
Q. But Mr. Gajer, you testified all your land except 50 acres was flooded in 1915, and more flooded in 1916, *and* 1915?
A. Then it must have been about 50 acres. Where we had the buildings it was bare.
Q. How many acres in that plot where you had the buildings?
A. It might be there are 50.
2402 Q. Well, you had as much flooded in 1916 as in 1915?
A. Yes.

Q. Now did you produce on these flooded lands any crops in the year 1916?

A. On these flooded lands we didn't.

Q. You didn't have any crops in 1916, on any flooded lands?

A. Didn't have no crops at all. All what we had left was——

Q. I am not talking about that that wasn't flooded, I am talking about the flooded land. Did you have any crop on the flooded land?

A. No, sir.

Q. Now, did you produce any crops in 1916, on the lands that were not flooded in the year 1916?

A. We raised a little wheat on the corner of the quarter where I am living in the northwest corner of 33.

Q. How many acres of wheat did you raise?

A. Probably 20 or 25.

Q. Did you harvest and thresh it?

A. Yes, sir.

Q. What yield per acre did you get on those 25 acres?

A. 9 bushel-.

Q. Now you have computed your losses on these flooded lands for the year 1916, have you, the losses that you sustained by reason of your not being able to crop them on account of these flood waters?

A. Yes, sir.

2403 Q. Will you tell the Court what losses you sustained on that account for the year 1916 on these flooded lands, how much in dollars and cents?

A. Well, I would have raised 200 acres of wheat.

Q. You would have sowed 200 acres of wheat?

A. Yes, sir.

Q. Value, how much?

A. It was worth, the wheat that we threshed and sold, $1.40, somewheres around there.

Q. That is for the wheat that you harvested?

A. Yes, on 33.

Q. How many bushel- to the acre did you get?

A. 9 bushel-.

Q. Now what would that 200 acres of wheat have netted you?

Mr. Palmer: This is all objected to as not the proper measure of damages.

Commissioner: It is understood that your objection the other day applies to all this line of examination.

A. I could hardly say.

Q. If you had 9 bushel- to the acre, computed on the basis of 9 bushel- to the acre, and it was worth $1.40 a bushel that would make it worth $12.60 per acre, wouldn't it?

A. Yes.

Q. And with 200 acres that would give you $2,520, wouldn't it?

A. Yes.

Q. Now, how — did you say it would have cost to have sowed, harvested, threshed and marketed that 200 acres of wheat?

A. It will cost $1 an acre to harvest it.

2404 Q. How much would it cost to harvest and thresh?

A. One dollar an acre harvesting, $200; five cents a bushel threshing, and 25 cents an acre shocking.

Q. That would be $40 for the shocking then?

A. Yes, sir.

Q. That would be all the expenses?

A. Hauling.

Q. How much would that cost an acre?

A. One cent a bushel.

Q. That would be $18 then?

A. Yes, sir.

Q. Would that be all of the expenses you would have to incur to seed it, harvest and thresh and market it?

A. Yes, sir.

Q. Making a total of $953, is that right?

A. Yes, sir.

Q. Now if you deduct the total expense of seeding, harvesting, threshing and marketing from the gross total of $2,520, you would have the net value of the crop?

A. Yes, sir.

Q. How much does it leave.

A. $1,567.

Q. Now how much do you figure your loss of corn for that year?

A. I would have put in 20 acres of corn, if I could.

Q. What would have been the value of that corn?

A. If I could raise it it was worth $15 an acre.

Q. That would be the net value of it?

A. Yes, sir.

2405 Q. After deducting all costs of production?

A. Yes, sir, Corn was selling for $18 on the ground.

Q. What other kind of grain would you have put in—how about the barley?

A. I would have raised twenty acres of barley.

Q. What would have been the value of that crop, the net value to you, after deducting all expense of production, harvesting, threshing and marketing?

A. It would go if it was like my former crop 31 bushel to the acre.

Q. And computed on the basis of 31 bushels to the acre, what would have been the value of that 620 bushels of barley at the market price for 1916?

A. I couldn't remember what the market price was on barley last year.

Q. When is the threshing season for barley?

A. About in August and September. We will figure the barley at sixty cents like I sold it in 1915.

Q. Sixty cents a bushel for 620 bushels would make $372 gross?

A. Yes, sir.

Q. Now what would you have had to pay for seed barley for twenty acres?

A. Seed barley is worth about a dollar a bushel.
Q. How much would it take for an acre?
A. Two bushel.
Q. That would be $1.00 an acre?
A. Yes.
Q. For twenty acres $80?

—. ——.

2406 Q. Now how much would it have cost to have harvested and threshed and marketed it?
A. Three cents a bushel to thresh it.
Q. That would be $12 for threshing—how much for harvesting?
A. One dollar an acre.
Q. $20 for harvesting—how much for marketing?
A. A cent a bushel.
Q. That would be $6.20 more? That would be $118.20. Now deducting $118.20 from the gross value of $372 the net value to you would be $253.80?
A. Yes, sir.
Q. Now what other crops would you have put in that flooded land if you could have got on it?
A. Well, I had the hay there, the wild hay.
Q. Would you have had 200 acres of hay in there in 1916?
A. No not that much.
Q. You have only got 240 acres of crop—wouldn't you have had any in flax?
A. I would have put in a little flax if I could on the balance of the land.
Q. How many acres of flax did you figure you would have put in?
A. On all of the rest of it what I had left on the cultivated land.
Q. Do you mean that you would have put in 188 acres of flax?
A. The rest of it, yes.
Q. In the year 1916?
2407 A. Yes, sir.
Q. Did you ever raise as much flax as that in your life in one year?
A. I raised in 1904 150 acres.
Q. But you think in 1916 you would have had 188 acres?
A. All the rest of it.
Q. That would have been 282 acres of flax—do you think you would have put that much flax in?
A. No, I wouldn't put that much flax in.
Q. How much flax?
A. Not over 150 acres.
Q. What would have been the value of that crop if you had produced it, based upon the yield of other flax crops for that year in that locality on similar lands—how much per acre—what was the average yield per acre in 1916?
A. Last year the flax went from, if I remember right, somewhere around 7 or 8 bushel.
Q. Well, take seven, that would have been 1,050 bushel of flax,

Now what was the value of that flax per bushel during the marketing season of 1916?

A. The flax was $2.50.

Q. At your market where you marketed your flax?

A. Yes, sir.

Q. Did you sell any?

A. No.

Q. Do you know of anybody else that did sell any that year between August 15 and January 1st?

A. No, I don't, but I think that is what the market was.

2408 Q. That is your best judgment. Where did you get your information?

A. If I remember right I saw it in the newspapers, the market reports.

Q. I am talking about what they were paying for it down where you market your crops, not what they were paying in Minneapolis or Chicago, but where you market your crops—where do you market your crops?

A. Right here in Fairmount.

Q. Well, what were they paying for it here?

A. $2.50.

Q. At that price per bushel a yield of seven bushel per acre, the gross value of that 150 acres of flax would have been $2,625?

A. Yes, sir.

Q. Now what would it have cost you for the seed for that many acres?

A. Flax seed would cost about $3.00 a bushel.

Q. And how many bushel would it take to seed 150 acres?

A. Half a bushel to the acre, 75 bushels, $225.

Q. What would it have cost you to have harvested and threshed and marketed that 1,050 bushel of flax?

A. It would cost one dollar an acre harvesting, 15 cents a bushel for threshing, one cent a bushel for hauling total $270.75.

Q. That is in addition to the cost of the seed?

A. Yes, sir.

Q. Leaving the net of the loss to you of $2,139.25?

A. Yes, that is right.

2409 Q. Now we have 132 acres of your land that was flooded in 1916 yet to be accounted for. What crops would you have had on the farming portion of this flooded land if you could have cropped it in the year 1916?

A. I would have put that into oats.

Q. What would have been the value of that crop to you on the basis of the average yield of oats in that vicinity for that year and with the current market price of oats for the marketing season for that year—what was the yield per acre for that year?

A. About twenty-five bushel.

Q. Don't you know the prevailing price of oats for the marketing season of 1916 was about sixty cents a bushel?

A. I think so.

Q. Assuming, Mr. Gajer, that the average yield per acre in that locality for the year 1916 was about fifteen bushel to the acre and

that the average marketing price during the oat marketing season was sixty cents a bushel, what would have been your loss on that 132 acres of oats that you didn't have in, but that you would have put in? Would it have been 1,980 bushels, $1,188?

A. Yes, sir.

Q. Now what would the seed have cost to sow 132 acres—what would have been the value of the seed?

A. The seed itself is generally ten cents higher—two bushel to the acre, 264 bushel, at 70 cents a bushel.

Q. $184.80?

A. Yes, sir.

Q. Now how much would it have cost to harvest?

A. Cost the same as the barley, a dollar an acre to harvest
2410 it, $132.

Q. How was the threshing a bushel?

A. About 4 cents.

Q. Sixty cents an acre, $79.20 for the threshing?

A. Yes, sir.

Q. Now, how much would it have cost to market it—how much per bushel?

A. A cent a bushel to haul it.

Q. $19.80.

A. Yes, sir.

Q. That would make a total cost of seed, harvesting, threshing and marketing of $415.80. Is that right according to your figures?

A. Yes, sir.

Q. That would leave a net value to you on that 132 acres of oats of $772.20. Is that according to your figures?

A. Yes, sir.

Q. Making a total loss to you by reason of the flooding of these lands of yours to which you have testified in as the year 1916 of $5,032.25. Is that acording to the way you have computed it?

A. Yes, sir.

Q. Did you produce any crop on any of these lands that were flooded in the year 1916 in 1917?

A. Yes, sir.

Q. How many acres?

A. We had in 52 acres of flax, about 20 acres of corn, 20 acres of barley, 20 acres of buckwheat.

Q. That would leave 410 acres of lands that were flooded in the years 1915 and 1916 that you produced no crop on in the year 1917, is that right?

2411 A. Yes, sir.

Q. Why didn't you crop that other 410 acres in the year 1917?

A. It was in a wet condition and I couldn't get it in.

Q. What made it wet?

A. Flood waters.

Q. To what extent did the flood waters get up on that 410 acres in the year 1917?

A. Well, the water wasn't really on it, but the land was wet.

Q. The land was wet?

A. From 1915 and 1916.

Q. Then it wasn't by reason of these flood waters?

A. Yes, sir.

Q. Now what was the loss to you for 1917, on that 410 acres of flooded lands?

A. It would be the same as in 1916 for it if I could raise a crop.

Q. Mr. Gajer that net loss to you, as you have computed it for the year 1916 on the 522 acres is approximately $10 an acre. Now you say that you lost the use in 1917 of 410 acres by reason of these flood water conditions?

A. Yes, sir.

Q. And you say the value would be about the same as in 1916, do you mean the value per acre?

A. Well, it would be worth a little more in 1917.

Q. Well, if it was approximately $10 an acre in 1916 do you think $10 an acre for the year 1917 would be about the amount of your loss?

A. No, it would be about $15 an acre I think.

2412 Q. $15 an acre on 410 acres—that would be $6,150, would it? Is that your net loss or gross loss?

A. That would be a net loss.

Q. That would be $6,150 the way you have computed it?

A. Yes.

Q. Now, Mr. Gajer, let me ask you what do you say would have been the rental value of this flooded land to you as owner for the year 1915 on 522 acres?

A. It would be a little better than one half.

Q. About how much?

A. About 55 per cent.

Q. About 45 per cent to the tenant?

A. Yes, sir.

Q. You mean 55 per cent of the net totals given by you for the year 1915?

A. Yes, sir.

Q. The total losses you have testified you sustained on your land by reason of these flood waters in 1915 was $2,507. You say you think the rental value of the land that year would have been 55 per cent of that total to you?

A. Yes, sir.

Q. And 55 per cent of $2,507 is $1,378.85, isn't it?

A. Yes.

Q. And do you think that would have been the rental value of that land to you in the year 1915?

A. Yes, sir.

Q. How would it be as to the years 1916 and 1917—what would be the rental value for the land for those two years?

2413 A. Same basis.

Q. That is your net loss for 1916 was $5,032.25?

A. Yes, sir.

Q. And you think the rental value would have been 55 per cent of that amount for 1916?

A. Yes, sir.

Q. And you also think as I understand you, that the rental value of the land to you for the year 1917 would have been 55 per cent of $6,150 as you gave the crop value for that year?

A. Yes.

Q. Now in making these calculations and deductions, Mr. Gajer, as to your losses for each year as you have computed them and given them, have you deducted in each case every item of expense that would have been necessary to have incurred to market those crops?

A. Yes, sir.

Q. How long did you say you had known these lands that you now own?

A. I known them since I came to this country—thirty-two years.

Q. Have you seen them frequently during that period of years at different seasons of the year?

A. Yes, sir, every year.

Q. And have owned them and farmed them for how many years, that is that portion on section 33?

A. Ever since 1903.

Q. Now during all the time you have known of the lands and during all the time that you have farmed them, you may tell the court whether or not you have ever seen the water on these lands

2414 as it was in the years 1915 and 1916 and 1917?

A. I seen the water in 1907, I think it was in the spring when it was overflowed a couple weeks in the spring when the snow melted.

Q. How long did the water in the spring of 1907 stay on these lands?

A. About two weeks.

Q. Now was that true as to the waters of 1915, 1916 and 1917, did they stay longer than two weeks?

A. Yes, they stayed pretty near to 1917.

Q. As a matter of fact the water first began to come on these lands in the fall of 1914?

A. Yes, sir, in the fall a little.

Q. It came on in the early summer of 1915 didn't it?

A. Yes, sir.

Q. And stayed on all that fall and froze up on the lands that winter?

A. Yes, sir.

Q. And then it came on again in the late spring or early summer of 1916?

A. Yes, sir.

Q. And stayed all summer?

A. Yes, sir.

Q. And come on again in the spring of 1917 to the same extent?

A. A little extent, but not so much.

Q. Did you ever *these* these lands when, by reason of flood waters they were not susceptible of being cropped and crops harvested on them any year since you have known them up to the year 1915?

A. No.

2415 Q. And have you during the time you have known them up to the year 1915, and during the time you have harvested

and farmed them been able to crop them and harvest the crops on those lands every year up until the year 1915?

A. Yes, sir, except along the river when the water was a little high, in 1907.

Q. With that exception has there ever been a year when you haven't been cropping and harvesting your crops on these lands up to 1915, since you have owned them?

A. No.

Q. Now much land was wet in the year 1907 so that you couldn't crop that or didn't crop it during that year?

A. It was meadow land that I had along the river.

Q. Did you cut the hay on the land that year?

A. I cut it after harvest.

Q. Then you did harvest the crop on it?

A. Yes, sir.

Q. Then there isn't any exception of any year?

A. No.

Q. Since you owned the lands that you didn't crop and harvest the crops on them?

A. No.

Q. Mr. Gajer, did these flood waters that came on your lands in the years 1915, 1916 and 1917, damage them to any extent, that is in their arability or workability, or crop production qualities?

A. Yes, they did.

Q. To what extent do you think they have been damaged, basing it on the damage per acre—how much would you say, in your
2416 judgment, the damage per acre would be to restore these lands to the condition they were prior to the time they were flooded in the year 1915 and so on?

A. It would be $5.00 an acre anyway.

Q. You think that wouldn't be an unreasonable sum?

A. No, sir.

Q. And would that be true as to your whole 522 acres that were flooded?

A. Yes, sir.

Q. And your damage in that regard would be $5.00 per acre on 522 acres of land?

A. Yes, sir.

Q. Did you have any buildings damaged by these flood waters of 1915 and 1916?

A. No sir.

Q. What was the fair market value of these lands that you own prior to the appearance of these flood waters in the year 1915?

A. About $75 an acre I should judge.

Q. Is the quarter section where you live worth any more than the other lands per acre?

A. That would be worth a little over a $100 an acre.

Q. And the other land you own about $75?

A. On an average about $75.

Q. You think that was the fair market value before the flood?

A. Yes.

Q. Now have you any information as to what their market value is since the flood waters came on them?

2417 A. Yes.

Q. You may tell the court what such value is?

A. Well, it has no value on it now.

Q. You mean it has no market value?

A. It has no market value now.

Q. Why not?

A. Because on account of the water.

Q. On account of the flood waters?

A. Yes, sir.

Cross-examination.

By Mr. Palmer:

Q. What land is that that you own on section 16?

A. Seventy-two acres and a fraction. It has hay land. It is just hay land, no buildings on it.

Q. It is the southeast of the northeast and lot 1, is it?

A. Yes, sir.

Q. When did you buy that land?

A. I think it is about seven years ago.

Q. 1910?

A. When the school land was sold.

Q. That was a dry year when you bought it, wasn't it?

A. About the same as any others, not extra dry.

Q. 1910 wasn't an extra dry year or 1911 either? Do you remember about that?

2418 A. I don't know whether it was extra dry or not. I don't remember.

Q. And this land was in 16?

A. Yes, sir.

Q. What did you pay for this land?

A. $13.25 an acre for one part of it, I think and for the other forty I think I paid $15 an acre.

Q. And you think in four years, up to 1914, it went up to $75 an acre?

A. That is more than four years.

Q. Well, from the time you bought it up to 1914 you think it went up so it was worth five times as much as it was when you bought it?

A. I think so, yes, sir.

Q. What caused that five-fold increase in value?

A. All the land was raising around here during that time.

Q. And the land was all going up five times over?

A. Well, I don't know whether it went five times over, but it went more or less.

Q. What was you- land in 33 worth in 1910?

A. Probably $50, $40 or $50 an acre.

Q. And you think in 1914 it was worth about $250 an acre?

A. No, I don't claim that.

Q. That didn't go up so fast as this land on the river?

A. It might not.

Q. Well, you don't think then that increased five times over from 1910 to 1914, that land in 33?

A. Well, it probably did, I don't know.

2419 Q. You think in 1914 your best judgment is that that land in 33 was worth $250 an acre, Mr. Gajer?

A. I haven't set any price on it, because I don't want to sell it.

Q. I thought you just set a price on it of $100?

A. I say I think it is worth about that much, but probably it is worth more.

Q. How much is it worth now?

A. I haven't got it for sale. I don't know.

Q. You wouldn't sell it at any price?

A. Not that there.

Q. Now this land down in section 16, did you understand when you bought it that it was listed as marsh or swamp land?

A. I knew the land many years before.

Q. Did you ever look at the government plat to see whether it was listed as marsh or swamp land?

A. I never did.

Q. Well, since you knew it so many years before tell us when it was broken up?

A. It wasn't broken up.

Q. Never had a plow in it?

A. No.

Q. Never had a building on it?

A. No.

Q. Never had a fence on it?

A. No.

Q. And it was simply cut for hay?

A. Yes, sir.

Q. Did you cut it for hay in 1914?

A. Yes, sir.

2420 Q. How much of it?

A. Pretty near all except right next to the river, it might be about ten or twelve acres.

Q. All but 10 or twelve acres next to the river which you couldn't cut in 1914?

A. I couldn't cut it because it was a little wet.

Q. But you think that ten or twelve acres next to the river was worth $75 an acre in 1914?

A. It was worth just as much as the rest of the land.

Q. That is $75 an acre?

A. Yes, sir.

Q. Had that ten or twelve acres next to the river ever been used for anything since you knew it?

A. No.

Q. You got it from the state?

A. Yes, sir.

Q. Who had been cutting it for hay prior to the time you bought it?

A. Well, it had been rented out to different parties.

Q. How much did they pay an acre for it?
A. I never asked what they paid for it.
Q. Never made any inquiry as to that?
A. No.
Q. Did you ever rent any of it?
A. I didn't.
Q. Did you ever rent any similar land along there for hay?
2421 A. Yes, I did.
Q. What did you pay for it?
A. I paid from two to three dollars an acre for the grass.
Q. Similar ground?
A. Yes, sir.
Q. Now did you figure on keeping that for hay land?
A. No, I didn't.
Q. You didn't figure on keeping it for hay land?
A. No.
Q. Did you ever break it up after you got it?
A. I didn't but I was going to.
Q. You were going to break it up in 1916, the wet year?
A. No, I didn't figure on that in a wet year. I was going to break it up in dry years.
Q. Not in a wet year?
A. No.
Q. Now take up in section 4, where was your hay land on that piece?
A. In section 4 I cut hay there on lot 1.
Q. That is next to the river?
A. And lot 2 and the rest that joins to it.
Q. The other eighty adjoins it?
A. Three forties.
Q. 120 acres you had in hay?
A. No, it is broke up there about 65 or 70 acres.
Q. Then you had 50 acres in hay there?
A. Yes.
Q. How many acres of hay land did you have on section 4, wild hay?
2422 A. I think it was 88¾ acres of wild hay on section 4.
Q. You didn't intend to keep that for wild hay?
A. No.
Q. You figured on breaking that up in 1916?
A. No, but when it gets dry.
Q. You were going to wait until it got good and dry and then break that up?
A. Yes, sir.
Q. Hadn't it ever been dry?
A. Yes, sir.
Q. So you could break it up?
A. I was breaking there in 1915 right before the water came.
Q. It was dry then?
A. Yes, sir.
Q. How much did you break of this 88¾ acres?
A. I broke up I think 12 acres.

Q. Of this 88 acres?
A. No, outside of that.
Q. Then you hadn't broken up any of the 88 acres?
A. No.
Q. You were waiting for that to get dry?
A. It was dry, but the water came on there before I could break up any more.
Q. You had been there about thirty-two years, hadn't you ever seen a dry year when you could break that up?
A. I seen it many years.
Q. Why didn't you do it then?
2423 A. Well, I didn't have time to do it.
Q. You didn't have time in that 32 years to break up any of that?
A. I didn't own it 32 years.
Q. How long did you own that in section 4?
A. I think I owned that about ten or twelve years.
Q. You bought it along in 1907 or 1908?
A. About in 1908, if I remember right, I don't know exactly when I bought it.
Q. What did you pay for it?
A. $2,000 cash.
Q. For how many acres?
A. For 154 acres and a fraction.
Q. That would be something like $12 an acre that you paid for it?
A. Yes, sir.
Q. In 1907 or 1908 you paid $12 an acre for this land in Sec. 4?
A. Yes, sir.
Q. Who had it before you did?
A. A man by the name of N. Davis.
Q. Did he homestead it?
A. His father did.
Q. How long had he been there on it?
A. Well, I don't know how long. He never been on very long.
Q. His father had been there a good many years?
A. No, I don't think he been there many years.
Q. If he homesteaded it he must have been there some time—don't you know when Davis got it?
A. No.
2424 Q. You came to the country in 1885?
A. Yes, sir.
Q. Davis there then?
A. No, I don't know when Davis filed on it.
Q. Well, was he there when you came to the country in 1885?
A. He wasn't there, no.
2425 Q. Was there anybody on that land at all?
A. No, nobody was on it.
Q. Just lying there, wild land?
A. Wild land.

Q. Very valuable you thought?
A. Yes.
Q. You looked at it when you came here in 1885 and saw that it was dry and valuable land?
A. Yes, I did.
Q. Why didn't you homestead it then?
A. Because I got a different piece.
Q. What piece did you get?
A. In Four, what lays right next to it.
Q. How much did you get?
A. 160 acres.
Q. You got 160 acres that lay east of this 154?
A. No, west.
Q. Did you make any inquiry when you got this land that lay just west of this 154 acres as to who owned this 154 acres?
A. No, I didn't.
Q. You didn't ask who owned it?
A. No I didn't.
Q. Didn't ever ask whether it was taken up?
A. No.
Q. And there it lay and nobody on it, and not yet homesteaded?
A. No.
Q. Well, why did you take the piece farther away from the river, farther west?
2426 A. Because I thought it was——
Q. A better piece?
A. No, but it was handier there by the road.
Q. Where was that road when you took this land?
A. The road runs right east and west on the north line.
Q. Well if the road runs east and west then it was just as near this 154 acres as it was to the west part?
A. No, it wasn't. It is Lot 4 in the way.
Q. Who was living on that lot 4?
A. Nobody.
Q. That wild land?
A. It was cultivated before. It is wild now.
Q. When did it get wild again?
A. 1915 and 1916.
Q. That is the time your land got wild too?
A. Yes, sir.
Q. Was there anybody living on that land when you came there?
A. Nobody was living on it.
Q. Was it taken up from the government, do you know?
A. It was taken up by the government.
Q. Who had taken it up, do you know?
A. A man by the name of Thos. Reubish.
Q. How long did he stay there?
A. Well, he left there in a few years—just long enough to make a proof he lived there.
Q. And then he got off, did he?

A. Then he sold it.

Q. What did he quit for?

2427 A. I don't know.

Q. What did he get for it?

A. What he got for it, I don't know. It was traded for another land.

Q. Where was the other land that he traded for?

A. The other land was somewheres east of Breckenridge, Minnesota.

Q. Up on the prairie somewhere?

A. Up there somewhere.

Q. And the man he sold it to, how long did he stay?

A. The man farmed it—the fellow lives right west of me on 33—he farmed it until the water came on it. He rented it to my neighbor.

Q. It was just rented land?

A. Yes, sir.

Q. Has it changed hands since Reubish lived there?

A. Yes, sir.

Q. Do you know what it sold for the *land* time?

A. I don't know. I never inquired.

Q. Now you paid $12 an acre for those 154 acres, and you think that between 1908 and 1914, about six years, you think it increased six times in value?

A. It was worth that to me, $75 an acre.

Q. Well, your counsel asked you about the fair market value. You think it went up so that it was worth six times as much in 1914 as it was in 1908?

A. I think so.

Q. Well, now what caused this tremendous increase in the value of this 154 acres, Mr. Gajer?

A. The land was rising right along.

Q. Who raised it? Did you raise it?

2428 A. No, I didn't raise it.

Q. Who did?

A. Well, I don't know who did.

Q. You think all the lands surrounding you went up six times over between 1908 and 1914?

A. Well, I don't know if they went six times over, all of it.

Q. Well, this land did?

A. I didn't have it for sale anyway.

Q. Have you got it for sale now?

A. I have.

Q. What do you hold it at now?

A. Well, I don't think I get anything for it now.

Q. You think it has gone from $75 an acre in 1914 down to absolutely nothing in 1917?

A. Yes, sir.

Q. Now in that six years did you put some buildings on this 154 acres?

A. No.

Q. Had it ever had any buildings on it?
A. Only a shanty, I guess.
Q. Did you build that shanty there?
A. No.
Q. Then it wasn't this shanty that made it worth six times as much?
A. No.
Q. Did the shanty go off during that time?
A. The wind blowed it down and it burned up.
Q. That didn't help the value of the land six times over?
2429 A. No.
Q. When did you buy the rest of that land in Section 4?
A. That is the school land.
Q. That would be the east half of the west half of Section 4?
A. No, it is lot 1.
Q. When did you buy Lot 1, Section 4?
A. I think seven or eight years ago when the school land was sold.
Q. What did you pay for it?
A. I think $10 an acre.
Q. In 1910?
A. I don't remember whether it was in 1910.
Q. It was not any longer?
A. No.
Q. And between that and 1914 you think that went from $10 an acre up to $75?
A. The same as the rest of the land.
Q. Well, that was what they called swamp land, wasn't it? The reason you got it for $10 an acre?
A. I don't know.
Q. There wasn't any swamp about it?
A. No.
Q. It is not low land at all?
A. Yes, sir.
Q. Subject to overflow?
2430 A. *Well* the water is as high as in 1915 and 1916 it is.
Q. Any part of it ever been broken up?
A. No.
Q. Never had any buildings or fence on it?
A. No.
Q. Now when did you get lot 2?
A. From the same party, N. Davis.
Q. You got that for $12 an acre when you got the 154 acres?
A. Yes, sir.
Q. Now tell me about the east half of the west half of 4, when did you get that?
A. I think I got that in 1887 or 1888.
Q. Did you homestead that from the government?
A. I bought it as a pre-emption.
Q. What did you pay for it?
A. I think it was $1.25 an acre.
Q. Did you build buildings on it?
A. Yes, sir.

Q. Way up in the north part next to the road?
A. Yes, sir.
Q. Build pretty good buildings there?
A. Yes, sir.
Q. How much of a house did you build?
A. The house was 30 by 30.
Q. Two story?
A. One story and a half.
Q. Build a good barn?
A. Yes, sir, 24 by 44.
2431 Q. Good granary and hog house?
A. Granary 24 x 16, machine shed 60 x 18, another granary 16 x 16.
Q. So you had a good set of buildings there?
A. Yes, sir, and chicken house, hog house, and all out buildings.
Q. You set out a grove?
A. Yes, sir.
Q. Orchard?
A. Yes, sir. Couple acres.
Q. Well, you must have had a pretty good orchard, 21 apple trees worth $25 a piece?
A. That is not on the same place. That is on 33.
Q. Are these buildings still there on this east half of the west half of 4?
A. No.
Q. What became of them?
A. I moved some of them on this other place and tore some of them down.
Q. You moved some on to 33 where you are living now and some you tore down?
A. Yes, sir.
Q. When did you do that?
A. I think it was in 1905.
Q. Is that the year you bought the southwest of 33?
A. No, I think that was in 1903.
Q. 1903, you bought the southwest of 33—what did you pay for that?
A. $4,500.
2432 Q. That is about $27 or $28 an acre?
A. Yes, sir, somewheres along there.
Q. And then in 1905 you took these buildings off of section 4 and moved them up on 33?
A. Yes, sir.
Q. Part of them, and the rest you tore down?
A. Yes, sir.
Q. What did you do that for?
A. Because I wanted to be on the main road close to town so I could send the children to school.
Q. And incidentally you got a half mile farther west?
A. I got three fourths of a mile farther west.
Q. Three fourths of a mile farther away from the river?

A. No, it is just a half a mile farther away from the river, or a quarter of a mile.

Q. Now, at the time that you bought this land in 33 and paid $27.50 an acre for it or thereabouts, why didn't you buy some of that land over near the river that you bought some seven or eight years later for $12 or $15 an acre?

A. Well, I wanted to get on the road closer to town. I didn't need to have all my land right next to the river.

Q. You didn't want all of your land next to the river, did you?

A. No.

Q. Now, let me see about these crops. Including your land in section 16, you have got about 572 acres?

A. And a fraction.

2433 Q. 1915 was a pretty good year, wasn't it?

A. Yes, sir.

Q. A good crop year aside from these floods?

A. Yes, sir.

Q. And you said that you had in crop 135 acres of wheat 72 acres of barley, 12 acres of flax, 36 acres of corn and 14 acres of oats. That is 276 acres that you had in crops on the 522 that was drowned out. That leaves 246 acres you had in hay and pasture all told?

A. No, I had wheat and oats and barley that I harvested.

Q. Where?

A. On 33.

Q. I am talking about the land which was flooded in 1915, and you said there was 522 acres of, if I understood you right? Am I wrong about that. I want you to tell me what you had that was flooded on that 522 acres.

A. It was corn and wheat.

Q. Tell me how much corn did you have on the flooded land in 1915?

A. 38 acres.

Q. What else did you have on the flooded lands?

A. 14 acres of oats, 125 acres of wheat and 72 acres of barley 12 acres of flax.

Q. Isn't that all you had that was flooded?

A. No, there must be about—there must be more because it was all flooded except fifty acres.

Q. If it was all flooded but fifty acres then 522 acres were flooded, and you said you had 276 acres of that into crop. Now I want to know what you had on the other 245 acres of flooded land?

2434 A. Well, it must have been hay and pasture.

Q. Except an acre and a quarter of potatoes?

A. Yes.

Q. Now you say you had a loss on that land that was in crop of $3,916.25, including the hay and pasture in 1915? Did you figure that on a basis of a good, big crop the same as there was on the surrounding ground?

A. Well, I figured on what I harvested, what I cut on my own.

Q. That was an exceptionally good crop, wasn't it?

A. Why, it wasn't exceptionally good, that was the poorest I cut. The best of it got drowned out. I figured 20½ bushels on the wheat.

Q. 20 bushels of wheat to the acre is a fair crop?

A. Yes, but it was the poorest wheat I had left, on the old ground.

Q. You figured 20 bushels of wheat to the acre, and the other number of bushels as you have given them here?

A. 20½ bushels.

Q. Was this all on the flooded land that you had broken up at that time, 271 acres?

A. No, it is more broken up.

Q. You had 20 acres plain pasture?

A. Yes, sir.

Q. Now, you had 135 acres of wheat in 1915 and you figured you say in 1916 of putting in 200 acres of wheat?

A. That is what I was figuring on.

Q. Where were you going to put that?

2435 A. Put that if I could where the land was overflowed.

Q. Now you say you say you figured on 20 acres of barley in 1916?

A. Well, I have a half section and 65 or 70 acres broken up. It is 320 and 65 broken up all together.

A. I am talking about this flooded land, this 522 acres of flooded land. I wish you would get that in your mind. Now you say you figured on putting in 200 acres of that into wheat in 1916?

A. Yes, sir.

Q. Now you say you were going to put in 20 acres of barley on that same land, weren't you, the way you figured it here?

A. Well, I was figuring on the land what I have got broken up, what I was going to put in, all the plow land.

Q. That is what I am talking about, the part of this that was broken up,—20 acres of barley—that makes 220 acres?

A. Yes, sir.

Q. That takes all but 51 acres of your cultivated land. Now, you were going to put in 150 acres of flax?

A. I would if I had that much left. I was going to put the balance of it to flax.

Mr. Palmer: Then you figured on breaking up 100 acres of your meadow land in 1916, and putting into flax?

A. Well, I could if it was dry.

Q. Answer that question.

A. I could break it up if it was dry and put it in.

Q. So could I. Did you figure on doing it. Is that what you planned on doing, breaking 100 acres of your meadow land for flax in 1916?

2436 A. I thought I had enough broken up.

Q. You didn't have but 51 acres?

A. No, I must have figured wrong.

Q. You would have to break up 100 acres of your meadow to put into flax?

A. I was figuring on 200 acres of wheat.

Q. 200 acres of wheat, 20 acres of barley and 150 acres of flax, and of course to do that thing you would have to break up 100 acres of your meadow land, that is the way you figured it?

A. No, I thought I had that much land broken up.

Q. Did you put in in 1915 all of this flooded land that you had broken up?

A. I did every bit of it.

Q. Then you would have to break 100 acres more for flax. Did you figure on putting this flax in on new breaking or on old land?

A. Well, if I wouldn't have enough old land, I would put it on new breaking.

Q. And now you figured you say on 132 acres of oats for 1916. You were going to break up 100 acres of your meadow and pasture for flax and then break up 132 acres and put it into oats; that is what you planned on, was it?

A. No.

Q. How is it?

A. No, sir.

Q. You didn't plan on doing that? You figured out damages of 132 acres of oats in 1916 you were going to get some great big yield, 60 bushels to the acre on new breaking,—did you ever get 60 bushels an acre on new breaking of oats?

2437 A. Not on new breaking, I got it off from the old ground.

Q. You didn't have any old ground left, you have got it all in and 100 acres meadow; where did you expect to put those oats?

A. We got it mixed up some way, I don't know how.

Q. That would have taken, Mr. Gajer, every foot of your land, this flooded land broken up and into crop in 1916 without leaving any hay or pasture or meadow or waste land or anything else, not even roads, is that the way you figured it?

A. No, that wasn't the way I figured it.

Q. Did you ever see anybody raise oats on new breaking in your life?

A. I did myself once.

Q. What crops did you get?

A. I think it was about 18 or 20 bushels.

Q. Why did you charge up in your damages then, 60 bushels to the acre on new breaking?

A. I didn't charge it on that.

Q. You didn't mean to do that?

A. I didn't mean to charge 60 bushels. I mean the *the* price was 60¢ of oats. I don't think we have 60 bushels of oats, 15 bushels to the acre.

Q. I thought you said 60 bushels?

A. No, sir, not 60 bushels of oats.

Q. You think if you had the use of your land in 1916, that you would have broken up 132 acres and sowed it to oats?

A. No, I wouldn't break up 132 acres, and sow it to oats.

2438 Q. You think you would have broken up 100 acres more and sowed it to flax?

A. No.

Q. You would have had some busy time in 1916 if you had not had this flood?

A. I was busy anyway.

Q. In 1915, you had an acre and a quarter of potatoes; what time do you say in July this flood came into them?

A. First part of July.

Q. First part of July, and you say that the whole acre and a quarter were ripe and ready to dig?

A. I didn't say they was ripe, no, sir.

Q. I understand you to say they were fully matured?

A. No, they wasn't fully matured, they wasn't ripe, I never said that.

Q. What shape were they in?

A. Well, they was growing.

Q. You say they were worth $100 an acre. Did you ever sell any potatoes in the field the first of July and get $100 an acre for them?

A. I never sold any potatoes in the field.

Q. You never sold any potatoes in the field. Did you ever know anybody to sell potatoes in the field the first of July and get $100 an acre for them?

A. I didn't figure selling them the first of July. I figured getting them matured and harvesting them when ready.

Q. You figured that they were worth $100 an acre in the fall after they were dug and grown and in the market?

A. Yes, sir.

2439 Q. You figured corn, $15 an acre, corn ground in 1916. Did you ever rent any land for cash around there?

A. I never did.

Q. Did you ever know of any being rented?

A. Yes, sir, I did.

Q. How much did it rent for, plow land per acre?

A. Plow land for corn it rents for about $3 or $4.

Q. Plow land for corn rents for $3 or $4 an acre?

A. Yes, sir.

Q. What have you got it charged up here as damages $15 an acre for?

A. Because I could have raised that corn there for myself.

Q. You could have raised?

A. I could have raised that corn crop there.

Q. You could have gone out and rented some land and paid $3 an acre for that and raised corn on it, couldn't you?

A. No, sir.

Q. Why not?

A. Because I wouldn't travel all over the country to cultivate the corn looking for the land. I had my own.

Q. You stated that you didn't have land, that was what you was kicking about?

A. That was overflowed.
Q. Why didn't you go out and rent some more?
A. I ain't no renter.
Q. You preferred to put in a claim for damages at $15 an acre about five times what you could have rented land for?
2440 A. I didn't want to rent.
Q. Plow land suitable for putting in barley, what could you have rented that for in 1916?
A. I don't know. I never tried to rent any barley land.
Q. About $3 an acre?
A. I don't think so.
Q. You think *of* you were going to rent barley land you would have to pay more? What do you think barley land would cost to rent it?
A. I couldn't tell, I don't know.
Q. If you don't know, why do you charge up $18 an acre here?
A. Because I could raise the barley on my ground.
Q. You say 1915 was a good crop year and you figured here approximately $4,000 loss on this flooded land. Do you think that you would have had a better crop and bigger returns that wet year of 1916 than you would in 1915?
A. No.
Q. You don't think you would have had so much, would you?
A. I don't think it would have been as good as it was in 1915.
Q. Nobody had as good a crop in 1916 as they had in 1915, did they?
A. No, sir.
Q. How much less do you think it would have been in
2441 1916? You got about $4,000 for 1915 and that includes the fence and things, I think, and potatoes at $100 an acre and the fences and stuff. How much less do you think you ought to have for 1916, $1,000 less?
A. I don't know how much less it would be.
Q. Don't you think if you had got your crop in 1915, don't you think you would have got in the neighborhood of $1,000 bigger returns than you would in 1916, even if you had farmed in 1916?
A. Well, I might.
Q. Then when you told Judge Pinkney here that your loss in 1916 was more than $1,000 greater than it was in 1915, you didn't mean it did you, Mr. Gajer?
A. I probably had.
Q. You probably had what?
A. I probably had a bigger crop in in 1916.
Q. You think you would, you would have broken up the rest of your land then and put it in in 1916, is that what you mean?
A. No.
Q. If you hadn't broken it up in 1916, you would not have had any crop would you?
A. Do you mean to say, Mr. Gajer, as a fair man that you would have got, if you had put in your crop in 1916, that wet year and poor

crops all over the country, that you would have got $1,000 greater returns in 1916 than you did in 1915?

A. No.

Q. Now, how did 1917 compare with 1915 as a crop year?

2442 Just tell me your recollection of it, this last year 1917, how did it compare with 1915? Your book hasn't got that in it, just tell me what you know about it. Was 1917 a better crop year than 1915?

A. No.

Q. Wasn't as good?

A. No, it wasn't as good.

Q. Do you think that if you could have farmed your land in 1917 that you- returns would have been more than $2,000 greater than they would have been in 1915 if you had got your crop that year?

A. No.

Q. Then when you told Judge Pinkney that you thought your loss for 1917 was $6,150, you didn't mean it, did you?

A. Well, we was figuring an average crop.

Q. You think with an average 1917 would have been over $2,000 more than 1915; is that what you want to say?

A. No, I didn't mean that.

Q. Now, you think it would cost you $5 an acre to get that hay land in section 16 back where it was before the water came on it?

A. Yes.

Q. What is the matter with that land?

A. That land has got cat-tails and bare ground, part of it, the grass killed out, and that would take three or four years for——

Q. No grass on that land at all?

A. On part of it is and part of it cat-tails and part of it is bare.

Q. These cat-tails, do they grow on wild land?

2443 A. Cat-tails?

Q. Yes.

A. Well, that is just where they grow the most.

Q. They don't grow very well then on cultivated land?

A. They do grow on cultivated land too.

Q. But they grow a little better on wild land?

A. They do.

Q. Mr. Gajer, there is a ravine or creek that comes in from the west across Mr. Taylor's land and onto your land in section 4, is there not?

A. Yes, sir, there is.

Q. And there have been some ditches, some public ditches, put into this ravine further to the west?

A. Just one ditch, ditch number 5, what they call. It is open to that coulie there and runs to Mr. Taylor's farm.

Q. Did you get any damages after putting that ditch in?

A. It didn't do me no damage.

Q. Didn't do you any damage?

A. No, sir.

Q. You don't think there was any water that came through that ditch?

A. There was a lot of water that came through there but it went in the river.

Q. The water came through that and went into the river, is that right?

A. Yes, sir.

Q. I thought you said the river was full?

A. She was full.

2444 Q. How did it go into it if it was full?

A. That ditch wasn't running like the river was.

Q. The ditch wasn't as large as the river?

A. The ditch is pretty near level and the water from the river backs into it and it was running pretty near west where the ditch came from.

Q. The water came down in that creek and struck the river and backed up onto your land or Mr. Taylor's land?

A. No, it didn't run down to the river, the river was full.

Q. It backed up onto your land and Taylor's land?

A. My land was flooded before the ditch reached it.

Q. The ditch doesn't reach clear down to your land anyway?

A. It is a coulie, the ditch empties into a coulie.

Q. Empties into a coulie and then the coulie comes down to the land?

A. Yes, sir.

Mr. Bronson:

Q. There is no ditch there at all?

A. I deepened it, yes, sir, and put it through the coulie.

Mr. Palmer:

Q. You carried the ditch on?

A. I deepened it.

Q. You deepened the coulie across you- land?

A. Yes, sir, I deepened it.

Q. How deep did you make it?

A. Probably a couple of feet, 2 feet.

Q. Two feet deeper than it was naturally?

A. Yes, sir.

2445 Q. How wide is it?

A. About three feet.

Q. Three feet wide?

A. Yes, sir.

Q. That coulie crosses your land?

A. Yes, sir.

Q. And it is only three feet wide?

A. Three feet wide.

Q. Mr. Taylor said it was some four or five rods wide across his?

A. Across his land, yes, sir, on mine I made it deeper and didn't make it so wide.

Q. You mean the part you made you made three feet wide?
A. Yes, sir.
Q. You did that so the water would run in there?
A. Yes, sir, in the spring of the year when the waters comes through the coulie; any other time she didn't run.
Q. Mr. Gajer, you have given several items of damage here with the expectation of getting them from some source, haven't you?
A. Yes, sir.
Q. Have you contributed a sum of money towards the expense of carrying on this suit?
A. Yes, sir, I did.
Q. And have you done so with the understanding and expectation that if damages are recovered by the State of North Dakota against the State of Minnesota that you would get your damages out of it?
A. Yes, sir.

2446 Redirect examination.

By Mr. Pinkney:

Q. Mr. Gajer, accounting for your 522 acres of land that you said were flooded in the summer of 1915 I notice that the lands upon which you stated there were growing crops only aggregate 406 acres, leaving a balance of 116 acres of flooded lands that you haven't said anything about. What crops if any were on those 116 acres, of land that was flooded in the year 1915? What was growing on the land of the 116 acres of land in 1915 at the time the floods came?
A. Well, I had wheat in, oats and barley and corn; I think we had 56 acres of corn.
Q. Instead of 38 you think you had 56?
A. Yes, sir, 38 was lost and the rest of it we cut and——
Q. Harvested?
A. Harvested.
Q. How many acres of corn did you have altogether?
A. I think it was 56.
Q. That still would leave—go ahead and tell the whole thing.

The Commissioner: Haven't you been over that several times? Can't you get at it more quickly by asking how much on the whole tract he has not broken?

Mr. Pinkney:

Q. How many acres of land did you have on this whole tract of 572 that was not broken up?
A. I didn't have 572 acres that was not broken up.
Q. How many acres did you have broken on the whole 572 acres that you own?

The Commissioner: Let me ask him a question:

2447 Q. How many acres of that entire tract of yours had you that was not broken at all in 1915?

A. 83¾ acres in section 4.

Q. How much in the whole of it?

A. In section 16 is 72 and a fraction, that is what I got into prairie and 25 acres in a pasture.

Q. 180 acres that was pasture and in prairie that you haven't broken, in grass land?

A. 72 acres I got in 16 and 25 in pasture and 83 or 84 in a prairie on this other.

Q. How much does that add up?

—. ——.

A. How much acreage did you have altogether on your entire land?

A. 572 and a fraction.

Q. That leaves 390 broken and which you have in crop?

A. 178 acres in grass, pasture and grass.

Mr. Pinkney:

Q. 178 our of your 572 in grass?

A. Yes, sir the rest of it is broke up.

Q. That means you got 394 acres that you have broken up, don't it?

A. Yes, sir.

Q. What did you have now on the other? You have given me what you had on 271 acres of your land, crops that you had on 271 acres of the land; what did you have on the balance of your 394 acres that were broken up?

A. It was in crop.

Q. Wasn't that flooded?

A. That was flooded, yes, sir.

Q. How many acres on your home place did you harvest
2448 the crops on that year?

A. I think about 50 acres of wheat and about 26 acres of oats.

Q. That is 76 acres?

A. And about 10 acres of barley, I guess.

Q. You had 74 more acres on the home place, on the home quarter? Was that 74 acres all flooded?

A. On the home place?

Q. Yes.

A. No, that was not. Let's see, I forgot the corn, 38 acres that was flooded out of 56.

Q. Now, Mr. Gajer, what a man's crop may be worth at any one year depends altogether on the yield and on the market price for the crops that he produces?

Mr. Palmer: It seems to me that is a repetition and a conclusion.

Mr. Pinkney:

Q. Isn't that true?

The Commissioner: That is a self-evident fact, isn't it?

Mr. Pinkney: I think it is self-evident, I don't think he ought to have any difficulty in answering it.

The Commissioner: I think counsel on the other side will admit it.

Mr. Palmer: We will admit anything that is self-evident.

Mr. Pinkney: Will you put the admission in the evidence, that you admit that to be true, Mr. Palmer?

Mr. Palmer: You said it was self-evident.

Mr. Pinkney: Read the question.

(Question is read.)

2449 A. Yes.

Q. Now during all the time you have farmed have you ever received such high prices for the crops you have produced as you received for those you did produce in the years 1915, 1916 and 1917?

A. No.

Mr. Bronson: I want to ask you a few questions Mr. Gajer Now listen to them and see if you understand, if you don't understand, tell me.

Q. You have 572 acres of land that you own?

A. Yes, sir.

Q. And in that land is the home place consisting of 160 acres?

A. Yes.

Q. Now, in 1915 a flood came on, and on the home place how many acres were covered by that flood?

A. I think it was about 40 acres in 1915.

Q. Then on the rest of your place, not the home place, it was flooded?

A. It was flooded except 8 acres in section 4; 8 acres of wheat I harvested.

Q. In 1916 you had a flood again?

A. Yes, sir.

Q. How many acres on your home place, the 160 acres was flooded in 1916?

A. It was all flooded except probably about 30 or 50 acres.

Q. 30 to 50 acres?

A. Yes, sir.

Q. And on the other place——

2450 A. That was all flooded.

Q. The gentleman from Minnesota asked you if you have put in a claim for damages that you have sustained and if you expected to recover for those damages. Now, I want to ask you the question, if you expect as a citizen of North Dakota the State of North Dakota to try to protect you in your property rights, your land rights, and to protect you against these floods that have occurred? Do you understand me?

A. Yes, sir.

Q. And your answer is yes?

A. Yes.

Mr. Palmer:

Now, Mr. Gajer, if you expect the State of North Dakota to protect you as a citizen in your property rights, why did you contribute money to the maintenance of this suit?

Mr. Bronson: That is objected to upon the same ground that a contribution to the Red Cross might not be proper at this time.

A. So I recover my damages.

Mr. Bronson:

Q. And to assist the State of North Dakota in seeing that your property rights are protected?
A. Yes, sir.

2451 PETER G. SMITH, being recalled in behalf of complainant, testified as follows.

Examined by Mr. Bronson:

Q. You have previously testified in this proceeding at St. Paul?
A. Yes, sir.
Q. You are the owner of the northwest quarter of section 10, township 130, range 47, and the west half of the northeast quarter and lots 3 and 4 of section 15 in township 130, 47?
A. Yes, sir.
Q. Your lands in section 15 were flooded in 1915 and 1916?
A. The biggest part of it was.
Q. You bought these lands about the year 1893?
A. About that year.
Q. You have been here, as I understand it, since about 1880?
A. Yes, sir.
Q. How much was broken up on this land at the time these floods occurred on the land that was flooded in section 15?
A. About 100 acres broken up.
Q. That had been broken for how long a period of time?
A. About 20 years, maybe, not all of it.
Q. From the time you owned this land, from 1893 to 1915, had you raised crops on your land?
A. Yes, sir.
Q. What kind of crops?
2452 A. Mostly wheat.
Q. And right along different times up to 1915?
A. Yes, sir, every year.
Q. Had you raised any corn on that land?
A. Yes, sir.
Q. And timothy and hay at different times?
A. Yes, sir.
Q. What has been the highest yield of wheat you had raised on that land from the time you owned it up to 1915?
A. I think some years I got 25 bushels.

Q. How about the corn?
A. Corn from 40 to 45.
Q. This land described in section 15 consists of how many acres?
A. 113½ by government survey.
Q. In actual acreage it is about how large?
A. There is over 120.
Q. There is a lot number and there is some meandered land?
A. Yes.
Q. And it is actually 120 acres?
A. Yes, sir, over that I think.
Q. The balance of this land over the 120 acres has been used for what purpose?
A. Hay land.
Q. Any upland hay?
A. All upland hay.
Q. What do you mean by upland hay?
A. Fine prairie hay.
2453 Q. What did it produce, generally speaking, during these years up to 1915?
A. Ton and a half to two tons an acre.
Q. Can every acre of this land, could it have been cultivated up to 1915?
A. Yes, sir.
Q. In 1915 did you have this land in crop?
A. Yes, sir.
Q. How many acres in wheat?
A. About 90 acres in wheat.
Q. How much in barley?
A. About 10 acres, a little over.
Q. How much in hay.
A. 20 acres in hay.
Q. This land was flooded in 1915?
A. Part of it, the biggest part of it.
Q. How much was flooded?
A. All but about 30 acres.
Q. You may state whether or not you lost by the floods of that year 75 acres of wheat and 10 acres of barley?
A. Yes, sir, I did.
Q. You may state what happened to the hay that year.
A. In 1915 I harvested all the hay I cut up.
Q. Before the flood came?
A. Before the flood came, yes.
Q. Now, you did harvest and thresh some of the wheat that was sown on that land that year?
A. Yes, sir, about 14 acres.
2454 Q. And from those 14 acres you may state whether you received 334 bushels of wheat?
A. Yes, sir.
Q. The balance of the wheat that was flooded and which you did not harvest was of the same general kind and character as what you did thresh?

A. Yes, sir, just as good or better, if anything.

Q. You may state whether or not you have computed as the value of the crop of wheat on that land in the year 1915, to-wit: 75 acres that was destroyed by the floods of 1915 at the same rate as was produced for the wheat that you did harvest and from such computation have arrived at the number of bushels, 1,778?

A. Yes, sir.

Q. Market price taken at what figure of such wheat?

A. $1 I think.

Q. This gives you a total of $1,778.00?

A. Yes, sir.

Q. Now, that barley on that land, 10 acres, you have computed at how much per acre?

A. 40 bushels per acre.

Q. What shape was that barley in?

A. It was in good shape, excellent barley.

Q. What state had it arrived at towards maturity?

A. It was almost ripe enough to cut.

Q. What market price did you take, which was the market price, if you can state?

A. 75¢.

Q. That would make $300.00?

A. Yes, sir.

2455 Q. And total value of your crops so destroyed in 1915, on this land, not including the hay, was $2,078.00?

A. Yes, sir.

Q. What deductions did you make for harvesting and threshing and marketing?

A. $306.50.

Q. That would leave then a net damage, to wit, loss of the crops so destroyed by the flood of 1915 on this land that you have described at the figure of $1,771.50?

A. Yes, sir.

Q. Do you state that to be the value of the crop?

A. Yes, sir.

Q. At the time that the floods occurred?

A. Yes, sir.

Q. You have been familiar with the rental methods under cropper's contract, have you not?

A. Not very much, I haven't paid much attention to it.

Q. You know what it is, generally speaking?

A. Yes, sir.

Q. You have heard the witnesses testifying about it?

A. Yes, sir.

Q. In figuring the rental value of this crop for the year 1915, you may state whether or not it can be computed by taking one half of the wheat crop and one half of the barley crop and deducting the expense of threshing and partially of harvesting, with the twine bill?

A. Yes, sir.

Q. You may state whether or not the computation of one
2456 half of such rental value would be $1,039.00?
A. Yes, sir.
Q. And the deductions, if I may state them, for the purpose of shortening this record, $86.25?
A. Yes, sir.
Q. Which would make therefore, the net rental value of the land so destroyed by those flood conditions in the year 1915, $952.75?
A. Yes, sir.
Q. According to your computation?
A. Yes, sir.
Q. In 1916, this land was cropped by you or not?
A. No, sir.
Q. Was there floods there in the year 1916?
A. Yes, sir.
Q. To what extent?
A. It was all flooded.
Q. You figured for 1916 what crops to be sown?
A. I calculated to put it all in wheat that year.
Q. You may state whether or not you made a computation for the year 1916 of such crop as would have been produced if those flood conditions had not occurred?
A. Yes, sir.
Q. I will ask you to state whether or not this computation is not as follows: Wheat 100 acres at 7 bushels per acre, market price taken by you $1.15 total $805.00.
A. Yes, sir.
Q. Less threshing $63.00 harvesting $100 marketing $21 seeding $143.75; total deductions $327.75?
A. Yes, sir.
Q. Leaving net for the wheat $477.25?
2457 A. Yes, sir.
Q. Now, the hay land for the year 1916, did you realize and returns fro[illegible] that?
A. No, sir.
Q. What is the rental value of that, per acre?
A. $3 an acre.
Q. Would have been that if the flood conditions had not occurred?
A. Yes, sir.
Q. That makes a total of $60?
A. Yes, sir.
Q. Therefore the total for 1916, would be $537.25?
A. Yes.
Q. This figures the crop loss of 1916?
A. Yes, sir.
Q. I will ask you now to figure the rental loss for the year 1916 and ask you to state whether or not it is not arrived at under the same method that we used for the year 1915?
A. Yes, sir.
Q. And using such method, you may state whether or not—What was the net rental value of these premises so overflooded in the year 1916 by flood waters as you have computed it?

A. The net would be $260.75.

Q. To which would be added the hay?

A. Yes, sir.

Q. $260.75 and the hay would be $60 as you have heretofore stated?

A. Yes, sir.

2458 Q. Would make a net of $320.75? Is that correct?

A. $20 I think for harvesting, I got $300.75.

Q. $300.75?

A. Yes, sir.

Q. In 1917 were these lands still affected by those flood conditions of 1915 and 1916 and partially 1917?

A. Yes, sir, they were affected some in the spring.

Q. How much land were you unable to crop in the year 1917?

A. About 70 acres.

Q. By reason of these flood conditions?

A. Yes, sir.

Q. You have made computations for the year 1917, have you?

A. Yes, sir.

Q. I will ask you to state whether or not those computations so made by you are not as follows; 70 acres of wheat at 8 bushels per acre, 560 bushels at a government market price of $2.05, making a total of $1,148.00 from which deductions are made for seed $184.50, harvesting $70, threshing $51.40 marketing $16.80 total $322.70, deducted from the gross returns leaves a net return of $825.30. Net loss?

A. Yes, sir.

Q. Now, the hay for 1917, what about that?

A. It is partly lost. Of course, there is a little that I cut; it wasn't very good hay, weeds and poor stuff.

Q. What have you figured as the loss for 1917 on the hay?

A. I figured it $60.

2459 Q. That would make a total loss for the year 1917, $885.30?

A. Yes, sir.

Q. Reducing this to the rental value basis, as we have mentioned concerning the years 1916 and 1915, I will ask you to state what was the rental value of those premises for the year 1917, as it would have been excepting for those flood conditions?

A. Rental value would have been $574.40.

Q. Is that the net?

A. No, that is the gross.

Q. That is the rental return for the year 1917?

A. Yes, sir.

Q. Mr. Smith, what was the market value of these lands that were so affected by those flood conditions as you have described them prior to the existence of such flood conditions?

A. It was about $75 an acre.

Q. You may state what the market value of these lands was after the existence of these flood conditions?

A. Fifty per cent less or more than that.

Q. Will you state what is the cost of restoration of these lands to their former condition, taking into consideration the plowing, putting back into the same state of fertility and conditions of that kind, per acre?

A. It would be $5.00 an acre anyway.

(Complainant's Exhibit 32 marked.)

Q. Mr. Smith, I show you complainant's exhibit 32, purporting to be a photograph of some growths on section 15, township 130, range 47, your farm. Do you recognize that growth?

2460 A. Yes, sir.

Q. These lands that were so flooded as you have described, were they affected by a growth of that kind?

A. Yes, sir.

Q. What is that growth?

A. Those are cat-tails.

Q. Was that there in the year 1917?

A. Yes, sir.

Q. On your land?

A. Yes, sir.

Mr. Bronson: We offer the exhibit, in evidence as part of the examination of the witness.

Q. Mr. Smith, I call your attention to the land situated south of this land owned by you which you have described in the evidence and which was overflooded as you have stated to wit: The west half of the southeast quarter and lots 1 and 2 comprising about 112 acres in section 15 township 130, range 47 sometimes known as the Grawe land, and ask you to state whether or not in the year 1915, this land was in crop in wheat about 60 acres and oats about 40 acres?

A. Yes, sir, it was.

Q. And whether or not the balance of said land was hay land?

A. It was hay land, yes, sir.

Q. I will ask you to state generally the condition of the oats prior to any flood conditions upon the same and the stand?

A. Had good oats, had a fine stand.

Q. They would have averaged, if matured and harvested and threshed, about how many bushels per acre?

2461 A. About fifty bushels.

Q. And the wheat, state likewise about its character and stand?

A. It was a good stand, averaged 23 or 24 bushels.

Q. And if harvested and threshed and marketed would have averaged in your opinion, how much per acre?

A. About 23 or 24 bushels per acre.

Q. Do you know whether this land was flooded in the year 1915?

A. Yes, sir, it was.

Q. And whether or not the crops upon it were destroyed?

A. Yes, sir.

Q. That includes all the land?

A. Yes, sir.

Q. And were they or weren't they cropped?
A. They were not cropped at all.
Q. And did the flood conditions extend to 1917 as to not cropping them?
A. Yes, sir.
Q. They were not cropped this season?
A. No, sir.
Q. And are these lands overgrown somewhat with cat-tails likewise?
A. Yes, sir, all overgrown yet.
Q. I call your attention to land in section 10 township 130, range 47, particularly described as the southwest of the southeast quarter and lot 2 consisting of about 71 acres and known sometimes as the Shouweiler land?
A. Yes, sir.
2462 Q. And ask you to state whether or not in 1915 there was any in crop on this land, some 40 acres in barley?
A. Yes, sir.
Q. And some crop on that land in fodder corn?
A. Yes, sir.
Q. And the balance hay land?
A. Yes, sir.
Q. Now, to what extent were the lands flooded in the year 1915?
A. Along the river for about maybe 5 or 6 rods from the river bank out.
Q. The barley land wasn't flooded?
A. No, sir.
Q. And the crop there was harvested and marketed and threshed?
A. Yes, sir.
Q. The hay lands were they flooded?
A. They was flooded but I think the hay that was there was cut before the flood.
Q. The hay, you think, was cut before the flood came?
A. Yes, sir.
Q. In 1916 flood conditions existed on this land?
A. Yes, sir.
Q. And the hay land overflooded?
A. Yes, sir.
Q. No crop returns from that?
A. No, sir.
Q. No*t* hay produced upon them?
A. No, sir.
2463 Q. And did this condition with respect to the hay land exist also in the year 1917?
A. Yes, sir.
Q. Have they grown up somewhat to cat tails?
A. Yes, sir, quite a little of it.
Q. I call your attention also to a small tract of land in section 10, particularly described as lot 1, consisting of about 24.10 acres, known as the R. A. Doue land and ask you to state whether or not that is cultivated land or in 1915 was cultivated land or hay land?

A. I think it was hay land in 1915.
Q. And whether or not it was flooded in the year 1915?
A. It was partly flooded.
Q. And whether or not it was flooded in 1916?
A. Yes, sir, partly.
Q. Was the hay used and cut in 1915?
A. Some of it was cut.
Q. And some not cut?
A. Some not.
Q. In 1916 was there any returns from the hay, any crop return of the hay in 1916?
A. I don't think there was.
Q. Flooded in 1916?
A. Yes, sir.
Q. That condition also continued in 1917?
A. Yes, sir, it wasn't flooded so much in 1917.
Q. But it was flooded in 1916?
A. Yes, sir, some of it.
Q. And no hay returns for the years, 1916 and 1917?
A. No.

2464 Q. I call your attention also to a tract of land situated in section 10, particularly described as the northwest quarter of the southeast quarter and the west half of the northeast quarter and lots 3 and 4 consisting of about 153.90 acres, sometimes the Rising land, and ask you if you are acquainted with that land?
A. Yes, sir.
Q. And whether or not same was flooded in the year 1915?
A. It was a little along the river banks.
Q. There is some hay land along the river bank, on the eastern portion?
A. I don't think there was any hay land on that.
Q. Not that year?
A. No, sir.
Q. And was it flooded in 1916?
A. It was a little.
Q. Was there any hay cut in 1916?
A. No, sir.
Q. About how much of this land was flooded in the year 1916?
A. Oh, probably 4 to 5 rods from the river out.
Q. 4 or 5 rods in width extending up the length of it?
A. Yes, sir.
Q. Any hay cut in there in 1916?
A. No, sir.
Q. Or in 1917?
A. No, sir.

2465 Q. I call your attention to lands situated in section 3 township 130, range 47, particularly described as lots 1 and 2 consisting of about 32.30 acres, sometimes termed the Martin Sekorski land, and ask you to state whether or not you know these lands?
A. Yes, sir, I do.

Q. I will ask you also to state to what extent these lands were flooded in the years 1915 and 1916?

A. Oh, they were flooded probably 2 or 3 rods to 10 rods from the river bank out.

Q. Along the river side?

A. Yes, sir.

Q. I will ask you to state whether or not then the extent, the northerly extent of the flood conditions of 1915 and 1916, did not approximately end therefore at the north line of section 3?

A. Yes, sir, I think it did end there The banks are higher the further you go north.

Q. And lots 3 and 4 therefore in section 3 would be just slightly flooded by these flood conditions of 1915 and 1916?

A. Yes, sir, would be very little flooded up there.

Q. Now, I call your attention to one other small tract, situated in section 22, known as lot 4 -onsisting of about 9 acres adjacent to the river and apparently known as the Dougherty land and ask you to state whether or not this land was flooded in the year 1915?

A. Yes, sir, I think it was.

Q. That land is south of you?

A. Yes, sir.

Q. And hay land?

2466 A. Yes, sir, it is hay land.

Q. And was flooded in 1916?

A. Yes, sir.

Q. The hay crop lost in 1916?

A. Yes, sir, I think it was.

Q. And the condition continued in 1917?

A. Well, they put up some hay there. I don't know how the hay was, I never was into it.

Cross-examination.

By Mr. Palmer:

Q. Mr. Smith, you think that you- damages for 1915 amount to $1,771.50?

A. Yes, sir, I think that is what it is.

Q. You have always thought that?

A. I have got it down here, I guess that is what it is.

Q. You think your damages for 1916 were $537.25?

A. Yes, sir.

Q. And you think your damages for 1917 were $885.30?

A. Yes, sir.

Q. And then you think you have damages of $5.00 an acre on the 120 acres; that would be $600, that is correct?

A. It is $5 damage for the land.

Q. That makes $3,794.05, upwards of $4,000, that is what you think your damages are, Mr. Smith?

A. Yes, sir.

Q. And you have always thought that?

A. Well, I haven't figured that in as any damage on the land, of course, it would take that much to put it back into shape.

2467 Q. You think, leaving that out, your damages are $3,194.00?

A. $3,294.00.

Q. Now, you testified under oath down at St. Paul that your damages were $1,500. When did you double those damages.

Mr. Bronson: That is objected to as argumentative to the witness and the witness has not doubled his damages, simply adopting another method of arriving at them. We object to the counsel trying to browbeat the witness.

A. I think that was just for the first year,the damage we had there first crop in 1915. I don't think I had any damage in for the other years at all then. That is the way I understood it.

Q. Was this question asked you: "Q. Have you any interest in the result of this suit?" And did you answer it: "A. Yes, sir, I have."

A. Yes, sir, I did.

Q. Was this question asked you: "Q. What interest, if you please?" and did you answer it: "A. I have got a claim in; that is, what my claim is, do you mean?" Q. Yes." and did you make this answer: "A. I have a claim in for $1,500 damage to crops."

A. Yes, sir, I think I did.

Q. When did you buy this land in section 15?

A. It was about 1893, somewhere along there.

Q. How long had you known the land before that?

A. Well, for 10 years or more.

Q. For 10 years?

A. Yes, sir; it was more than that since I come there I

2468 knew the land since 1880.

Q. You knew it in 1880 when you came there?

A. Yes, sir.

Q. You owned it at that time?

A. I couldn't say who it was that owned it.

Q. Whom did you buy it from?

A. I bought it of Mr. Spaulding.

Q. Spaulding?

A. Yes, sir.

Q. Do you know how long he had owned it?

A. He just bought it or made a deal for it just before I got it.

Q. Whom did he purchase it from, if you know?

A. He got a sheriff's deed for it, it was sold under a mortgage.

Q. Oh, it was sold under mortgage foreclosure and he got a sheriff's deed for it?

A. Yes, sir, there was no one here appeared against it at all.

Q. There was no one appeared in opposition to the mortgage foreclosure?

A. No, sir.

Q. Do you know what Mr. Spaulding got for it?

A. No, sir, I don't.

Q. What did you pay Mr. Spaulding for it?
A. I paid him $20 an acre for it in crop payments, he was to get half of the crop each year.
Q. $20 a year on crop payments?
A. Yes, sir.
Q. Did the land ever have any buildings on it?
A. No, sir.
2469 Q. Any fences?
A. No, sir.
Q. Any orchard or trees or anything of that kind?
A. No, sir.
Q. Had it been cultivated prior to your acquisition of it?
A. There had been a few acres broken upon it but it had been left to go back.
Q. A few acres had been broken and gone back?
A. Yes, sir.
Q. Had any use been made of it at all prior to your acquisition of it?
A. No, I don't think there was.
Q. Not even cut for hay?
A. The land was cut for hay.
Q. You say the land was cut for hay?
A. Yes, sir, it was cut for hay most every year, that is, before I got it.
Q. During all the time that you knew it for ten years?
A. Yes, sir.
Q. What year was it that you came here?
A. In 1880.
Q. In what shape was that land in in the spring of 1881?
A. In the spring it was all under water.
Q. What shape was it in in the year 1883, the spring of 1882?
A. There wasn't any water on it that year at all.
Q. Did you see it that year?
2470 A. Yes, sir.
Q. What shape was it in in *1997*, in the spring?
A. Well, I think there was some water on it in the spring.
Q. Pretty well covered, was it not?
A. Yes, sir, pretty well covered.
Q. That land is what is designated on the government plat as swamp or marsh land, isn't it, Mr. Smith?
A. I don't know how it is there but there is no swamp land on that, it is all good farm land.
Q. Always has been?
A. Yes, sir.
Q. It might have been cultivated prior to your getting it?
A. It hasn't been only just a few acres, as I say it has been broken up and went back. I suppose it was broken to hold it.
Q. Did you ever look at the government plat to see whether it was described as marsh or swamp land?
A. No, sir.
Q. You didn't look at it?

A. No, sir.
Q. You didn't make any inquiry afterwards?
A. No, sir, I knew the land so I didn't make any inquiry about that.
Q. What crop did you have on there in 1897?
A. I don't know just how much. I think I had wheat on it, what I did have.
Q. What quality of crop did you get?
A. I had pretty fair crop.
2471 Q. Have any hay on it that year?
A. Yes, sir.
Q. What did you have on there in 1906?
A. Well, I probably had some wheat on it.
Q. You don't remember what you had?
A. I know it was wheat, I didn't raise any other crops there.
Q. In what shape was it in the spring of 1906?
A. It was in good shape.
Q. Any water on it?
A. No, sir.
Q. Any water on any of that land along there?
A. No, sir, I don't think there was, I don't remember of any.
Q. 1907?
A. Well, there might have been some then in the spring.
Q. You have spoken here of some land south of yours in 15 and some land down in 22. I will call your attention to this Defendant's Exhibit 107, this government plat, and just look at it, Mr. Smith, and tell me if the area here marked as swamp or marsh land corresponds substantially to the overflowed area?
A. I think it does.
Q. Who owns that land up in section 3 you have been telling us about?
A. I think that is Sekorski owns that land.
Q. Does he live up there?
A. He lives in town here, his boy lives on the land.
2472 Q. He lives in Fairmount?
A. Yes, sir.
Q. Do you know whether he is making any claim for damages here?
A. No, sir, he is not.
Q. This land in section 10 you have spoken of, are the owners of that making any claim for damages here?

Mr. Bronson: That is objected to as well as the last question on the ground it is hearsay evidence and immaterial.

Mr. Palmer:

Q. So far as you are informed?
A. No, sir, they are not.
Q. And the owner of this land to the south of yours in 15, is he making any claim for damages here?

Mr. Bronson: Objected to on the same ground, all these questions, they simply call for hearsay evidence.

The Commissioner: Objections may stand as to all similar questions.

A. No, sir.

Mr. Palmer:

Q. The land in the north part of 22 along the river there, Dougherty I think you said, is he making any claim for damages here according to your understanding?

Mr. Bronson: Same objection.

A. I don't know whether he is or not.

Mr. Palmer:

Q. Where does Mr. Dougherty live?
A. Lives in town.
Q. Lives right here in Fairmount?
A. Yes, sir.
Q. Who owns that land south of you now, Groue?
2473 A. Groue or Greve, some such name, I don't know what it is.
Q. Where does he live?
A. He lives out in the western part of the state some place, he has the land rented.
Q. Where is the cultivated land on this land of yours that you have described in section 15?
A. Why, it is along the west side and in the southern, south side of it, 20 acres for hay is on the northeast part of it.
Q. Where is the hay land, is that the part adjacent to the river?
A. No, sir, it is along the road, runs back from the river towards the west end.
Q. And has the river well-defined banks there where your land is?
A. Yes, sir, there is quite — banks there.
Q. Quite a rapid flow of the water in the river?
A. Most generally is.
Q. Some springs it gets out of its banks and goes over onto your land?
A. It does when the snow goes off in the spring.
Q. And how frequently does that occur?
Q. Why, it is probably three or four times since I have been there.
Q. And when it does that it covers the land pretty well?
A. Yes, sir.

2474 Redirect examination.

By Mr. Bronson:

Q. Has there ever been a time since 1881—from 1893 up to 1915 when you were not able to crop this land, raise a crop on it?

A. No, sir, there was not.
Q. When you had the high waters in 1881, that was a temporary condition?
A. Yes, sir.
Q. Waters went off and crops were raised that year?
A. Yes.
Q. On these lands that were flooded in 1915 and 1916?
A. Yes, sir.
Q. And that same condition likewise happened in 1897?
A. Yes, sir.
Q. Even though there were heavy winter snows and they went off in a rush in the spring those lands overflowed some and the water went off?
A. Yes, sir, go off in a week's time.
Q. You would get crops?
A. Yes, sir.
Q. The condition in this year 1908 when you heard from the testimony about some obstruction down here by the bridge, were your lands flooded?
A. No, sir, wasn't flooded that year.
Q. And in all the years you have lived there, from 1880 up—from the time you have been in that territory have you
2475 ever seen flood conditions like 1915 and 1916 on these lands?
A. No, sir, I never did.
Q. That continued in 1917 to some extent?
A. Yes, sir.
Q. Counsel has asked you several questions about some of those other lands; you don't know anything about what communication the State of North Dakota has had with them, with their owners?
A. No, sir.
Q. Or what representations they made to the State of North Dakota, what claims they put in?
A. No, sir.

2476 JOHN C. HURDELBRINK, being duly sworn in behalf of complainant, testified as follows:

Examined by Mr. Bronson:

Q. You may state whether or not you are the owner of the south half of section 28, township 129, range 47, consisting of about 315 acres?
A. I am.
Q. And whether you have owned that since June, 1901?
A. I have.
Q. You paid for it how much?
A. I paid for it and lots 3 and 4, a mile south and a little east of me, $10,000.
Q. What year?
A. Just 1901.
Q. These lots 3 and 4, as I understood you, you sold in 1904?
A. I sold them 1904.

Q. $20.00 an acre?
A. Yes, sir.
Q. When did you break it up?
A. It was broke when I bought it.
Q. How much was broken up when you bought it?
A. About 245 acres.
Q. And how much was broken up in 1915?
A. The same land or 5 acres more.
Q. About 250 acres?
A. Yes, sir.

Q. State the nature, character and kind of soil.

2477 A. A black loamy soil with a clay subsoil.

Q. You may state what crops, generally speaking, you have raised from 1901 up to 1915.

A. Wheat, oats, barley, timothy and clover, alfalfa, upland hay and midland hay and pasture. Some flax, not much.

Q. You may state what kind and character of returns you have had from the cultivation and farming of this land between the years 1901 and 1915.

A. Good average crops for those years.
Q. How much did you raise of the oats per acre?
A. I raised as high as 60 bushels or over to the acre.
Q. And of wheat?
A. I have raised as high as 26 bushels to the acre.
Q. Barley?
A. As high as 60 to the acre.
Q. Corn?
A. 45 bushels to the acre.
Q. Hay?

A. I have raised in the midland crop I have raised as high as 4 tons to the acre every season and the upland hay I raised as high as 2 probably a little over.

Q. In what manner, if at all, up to 1915 were those lands subject to any overflow waters or any existing flood conditions?

A. Oh, they were partly overflowed in spring of the year, some seasons.

Q. Well, in 1907, for instance?
A. In 1907 I lost some of the hay crop.
Q. About how much?

A. About two-thirds of the high land hay and about

2478 25, between 25 and 30 acres of the midland hay.

Q. That was the summer condition of flood you had when this stream dammed up here?

A. Yes, sir, two or three miles north of me.
Q. After it was cleaned out, you recollect what happened?
A. Yes, sir.
Q. What did happen?

A. The water receded inside of 48 hours so that my high land meadow, this upland meadow, was entirely uncovered from water.

Q. Did those flood conditions equal in character those of 1916?
A. No, sir.

Q. Simply temporary?

A. Simply temporary overflow but I lost the crop.

Q. During the period that you have owned this land from 1901 up to 1915, excepting this period of 1907, which you have already described, has there been any time when these lands were not capable of cultivation and farming for all purposes?

A. Not any excepting a few acres, probably 5 or 6 acres, in the southeast corner adjoining the Bois de Sioux river.

Q. In 1915 you were subjected to flood conditions?

A. Yes, sir.

Q. Water came in about when?

A. Oh, it begin to rise in June and gradually rose until about the 25th of July until it got its highest stage.

Q. Overspreading how many acres?

2479 A. About 110 acres.

Q. What crops had you seeded before that time in 1915?

A. I had seeded wheat, oats, barley and corn.

Q. That is, on this land?

A. Yes, sir, on this overflowed land, part of it.

Q. I will ask you to state whether or not prior to these flood conditions these crops, as follows, were not seeded and sown or existing thereupon at that time, to-wit: 125 acres of succotash, 50 acres of barley, 30 acres of corn, 20 acres of wild upland hay, 13 acres of alfalfa, 15 acres of midland hay consisting of timothy and clover and 1 acre of potatoes? 10 acres of millet, 16 acres consisting of orchard and grove, cattle yards and barn yards? These represent the crops you had in 1915?

A. Yes, sir, on the whole half section.

Q. And that is the half section you owned?

A. That is the half section I owned, yes, sir.

Q. I will ask you to state whether or not some of these crops were destroyed by those flood waters conditions for the year 1915?

A. They were.

Q. Whether or not you have submitted to me a compilation of the specific acres of different kinds of grain that were so over-flooded in the year 1915 and the damage to same and the yield per acre in each of the same and the market price of each of the same?

A. I have.

Q. Now, I will state to you this compilation so submitted

2480 and ask you to state whether or not same is correct as a compilation made by you of the damages sustained by you in the year 1915 on these lands so flooded of the crops so destroyed and damaged by the conditions described, namely: 17 acres of succotash, yield 38 bushels, afterwards separated into oats 18 and wheat 20. Oats figured out 45 cents, total $137.70; wheat at $1.00, total $340; 12 acres of barley at 42 bushels per acre, market price 51 cents, total $257.04; 16 acres of corn on the field for $12.00 per acre, total $192.00; 20 acres of hay meadow at $2.50 per acre, $50.00; 40 acres of pasture at $2.00 per acre, total $80.00; damage to fences, $50.00; total $1,106.74; out of which deductions were compiled by you, as

follows: threshing, harvesting and marketing and twine, wheat, 340 bushels at 15 cents, $51; barley 504 bushels at 11 cents $55.44; oats, 306 bushels at 8 cents, $24.48; total deductions, $130.92, leaving a net loss of $975.82?

A. That is correct.

Q. Now in making this compilation and computation how did you arrive at the yield of the oats, wheat and barley and corn, etc.?

A. By the crops that I harvested, threshed and put in my granary, the yield of the balance of the crop that was not destroyed by flood waters.

Q. Of the crop that you had on this land of oats and wheat?

A. Yes, sir, on the balance of my own land.

Q. Of the same kind and character?

A. Of the same kind and character.

Q. Under the same circumstances?

A. Under the same circumstances.

2481 Q. And with reference to your corn, how did you arrive at this value, $12.00 per acre?

A. By the corn that was not destroyed by flood waters on my own land.

Q. And of a similar state of maturity, etc?

A. Yes, sir.

Q. How did you arrive also at the value of the hay meadow at $2.50 per acre and of the pasture at $2.00 per acre?

A. Well, by rental value. I must say really I haven't—cut a few acres of this highland hay in June. When I seen that the waters were steadily rising I cut a few loads of that hay, some of the loads I had up got covered up.

Q. And you also had the use of the pasture?

A. I had a little use of the pasture in the spring of 1915.

Q. So you made deductions?

A. So I made deductions for those benefits from my pasture and meadow also.

Q. I will ask you to state whether or not you also made a compilation of the rental returns 1915 based on what we have termed the method of renting under the cropper's contract?

A. I have.

Q. And I will ask you to state whether or not such compilation on a rental basis for rental returns *in* as follows: wheat $238.85; barley, $128.52; corn, $96.00; hay land, $60.00; pasture $120.00; making a total of $643.37?

A. Yes, sir.

Q. I will ask you to state whether or not that is the rental value of this land so flooded in the year 1915 as computed by you

2482 such as it would have been if those flood conditions had not occurred?

A. It is.

(At this time recess is taken until 9:15 A. M. November 9, 1917.)

Hearing resumed pursuant to adjournment at 9:00 a. m. November 9, 1917, with all parties present.

Direct examination of JOHN C. HURDELBRINK continued.

By Mr. Bronson:

Q. Going to 1916, how much was flooded of these lands that you have described in the year 1916?
A. 140 acres.
Q. What would the rental value of these acres so flooded in 1916 have been if not flooded, per acre?
A. The cash rental value?
Q. Yes.
A. $3.00 per acre.
Q. And you figured then for the year 1916 the loss sustained upon the rental basis at $3.00 per acre for the 140 acres?
A. Yes, sir.
Q. Which would make a total of $420?
A. Yes, sir.
Q. Now in the year 1917 you may state whether or not you likewise lost the use of the same 140 acres, or to what extent you did?
2483 A. In 1917 I lost part of the use of this 140 acre- for—part of the season I lost the use of all of it, but as the water receded I used it as pasture part of the season. About one-third of my pasture I got off this 140 acres.
Q. And then out of the rental value of $3.00 an acre you made a deduction of one dollar?
A. One dollar per acre as pasture received from these flooded grounds.
Q. Then for the year 1917 the rental value net for such land so flooded you stated to be $2.00 an acre or $280?
A. Yes, sir.
Q. Which would have been the net rental value of these lands if such flood conditions had not existed?
A. Yes, sir.
Q. What do you state the market value of these lands to have been before the existence of the flood conditions?
A. $100 per acre.
Q. What do you state to be the market value of these lands after the existence of these flood conditions?
A. The flooded area only.
Q. Yes, sir.
A. They have no market value.
Q. What do you state to be, Mr. Hurdelbrink, to be the cost of restoring these lands so flooded in the years 1915 and 1916 and part of 1917 to their former condition, including the damage effect of the floods on the arability tillability and ability to farm and so forth?
A. Extra labor about $5 per acre.

Q. Will you tell the improvements you have on this farm which was damaged in the years 1915 and 1916?

2484 A. Improvements at present?

Q. Yes.

A. I have a house, the main building 16 by 24, 16 foot posts; and "L" to it 14 by 16, 16 foot posts; a lean-to 12 by 22, used as a kitchen and part as an engine room, and electric light plant. Then I have a barn 48 feet square, main building 16 foot posts, 16 x 48, with lean-to on the north 16 x 48, and lean-to on the south 16 x 48, with eight foot posts at the outside, both alike, the leanto. And then I have a granary 24 by 40 with ten foot posts. I have a silo 14 by 30, and I have a coal shed 8 by 22, with 6 foot posts. I have a chicken coop 12 by 48 with 6 foot posts and then an old house that was on the place when I bought it.

Q. And you have an electric light plant besides?

A. Yes, sir.

Q. Now the value of the dwelling?

A. The house at $2,500. Barn, $1,000; Granary, $500; chicken coop, $250; coal shed, $150; silo, $350; electric light plant, $500, with plant, wire and fixtures. These buildings except the old house are all put on by me since I bought the farm.

Q. I believe you made a statement as to your damage to the fence, $50. What happened to the fence?

A. It was flooded, torn up by the flood and laid in the water and mud. The wires all rusted. Some of the posts broke and others were damaged, and also the fence that was not entirely down but partly, the lower wire in the water rusted so it is of no earthly use.

2485 Cross-examination.

By Mr. Palmer:

Q. Have you contributed a sum of money to the expense of maintaining this suit on the part of the state of North Dakota?

A. I have.

Q. And have you done so with the understanding and expectation that if damages are recovered from the state of Minnesota by the state of North Dakota, your damages as you have stated it here will be paid you?

A. I have, through our attorneys, yes—I believe I understood the question.

Q. There appears to be 280 acres in this south half of section 28-130-47 exclusive of lot 1, and the southeast corner appears to be in a lot 35 acres. Is that correct?

A. The south half of 28-130-47?

Q. Yes.

A. No, sir, that is not correct.

Q. Will you kindly tell me what is correct?

A. I have no lots. At the present time. My deed calls for 315 acres on the south half of 28-130-47.

Q. Well, that is the way it is designated on the government plat

as 280 acres, plus this lot 1, of section 28, 35 acres. That makes 315 acres, Mr. Hurdelbrink?

A. Yes, sir, that is what my deed calls for.

Q. Now this lot 1, being the 35 acres in the southeast corner of that half section, the 40 acres to the north of it, and about half of the 80 acres westerly of it appears to be designated on the government plat here as swamp or marsh land. I wish you would
2486 look at the government plat here and tell me whether that corresponds substantially to the area flooded in 1915?

A. No, it doesn't.

Q. Will you tell where the flooded land was?

A. It was very near to the west line of the east quarter along the north line of my land.

Q. The part there designated as lot 1, was flooded?

A. Yes, sir.

Mr. Bronson: Mr. Hurdelbrink—you don't know anything about the limits of lot 1?

A. I do not.

Q. That was the southeast quarter of the southeast?

A. I have never known it as lot 1.

Q. Well, you may call it the southeast of the southeast; that was flooded?

A. Yes, sir.

Q. That is 35 acres?

A. Yes, sir.

Q. And the 40 north of that; was that flooded?

A. Yes, sir.

Q. Now, you say all of the 80 to the west was flooded?

A. Not quite all of it.

Q. Well, about how much of it?

A. In 1915?

Q. Yes.

A. About one-third of it in 1915.

Q. It wasn't a straight line, it was kind of angling across it.

2487 Q. And where was the flood the widest, on what part of that 80?

A. On the north end of the 80.

Q. Now about a third you say was flooded?

A. Yes, sir.

Q. That would be about 25 acres or a little over?

A. Yes.

Q. About 100 acres?

A. About 110 acres all told.

Q. Now which third of this 80 was flooded, the westerly third or the easterly third?

A. Mostly the easterly part, on the north end and in the center of that 80 more than anywhere else.

Q. In 1916 it was the same area that was flooded except that the flood extended farther to the west?

A. Yes, sir, it covered about thirty acres more than it did in 1915.

Q. So that in 1916 the flood extended very nearly over to the west line of that 80?

A. Yes, sir.
Q. In 1917 how much was actually flooded?
A. Well, the spring of 1917 practically the same as in 1916.
Q. Well was that water which remained on there from 1916?
A. Partly.
Q. Well, do I understand you that in the spring of 1917 the river overflowed and brought new water upon that land?
A. Yes.
2488 Q. Over this entire area?
A. Not quite over the entire area, but it was so a person couldn't get a team on until along in June.
Q. You attributed a large share of that to water that had stood there from the previous year?
A. Yes, sir, all of it.
Q. You purchased these lands in 1901?
A. Yes, sir.
Q. What part of the year?
A. In June 1901.
Q. You got this 315 acres and then you got lots 3 and 4 in section 4, township 129, range 47?
A. I think so.
Q. Now these two lots, one of them, lot 3, contained 33.6 acres, and lot 4, 31.63 acres?
A. Yes, sir.
Q. So you have got all told 380 acres and a fraction, and for that you say you paid $10,000?
A. Yes, sir.
Q. That is $27 dollars an acre, substantially?
A. About there.
Q. Did you consider $27 an acre a fair market value of those lands at that time?
A. I consider the land cheap at this price.
Q. Now you say that in 1904 you sold lots 3 and 4 for $20 an acre?
A. I did.
Q. And you considered—was that a fair market value at that time for those lots?
2489 A. Well, it was as far as I was concerned. They were inconvenient to me and I was offered that for them and I sold them *them* at that price.
Q. During the three years that you had those two lots what use did you make of them?
A. Hay, mostly, and barley and flax I raised on them.
Q. How much of them did you break up?
A. I didn't break up any. It was part broke up.
Q. About how many acres?
A. About 16.
Q. Out of the 65?
A. Yes, sir.
Q. Where was that 16 acres that was broke up?
A. That was on the northwest corner of the lot next to the road, on the north of it.

Q. That would be lot 4?
A. Yes, I think so.
Q. Is that all that was ever broken up on these lots?
A. No, sir. There was about nine acres broke there and the balance was broke on the other lot.
Q. Which part of that lot?
A. It was broke on the southwest corner of the lot along the west line.
Q. Did you ever get any crops there?
A. I had a splendid hay crop, good flax crop and fair barley crop.
Q. Did you cut the hay clear down to the river?
A. Yes, sir.
Q. Each year?
2490 A. Yes, sir.
Q. Clear down to the river's edge?
A. Yes, sir, what I didn't cut I had cut on shares.
Q. Did you make inquiry when you bought this land as to its being subject to overflow from the river?
A. I did not.
Q. Where did you come from here?
A. I came from Northwestern Iowa.
Q. Had you ever seen any part of this land that you purchased prior to 1901?
A. No, sir.
Q. Was there any house on these lots?
A. No, sir.
Q. Any fence?
A. No, sir.
Q. On the land in section 28 were there any buildings at the time you bought it?
A. Yes, sir.
Q. Where?
A. About the center, along the west line, about the center of the west quarter along the west line, adjoining the road where the new buildings are today.
Q. Clear over on the westerly side of the land?
A. Yes, sir.
Q. Nearly a mile from the river?
A. Yes, in a str-ight line a little over a mile.
Q. What character of buildings were there there?
A. They were not very good.
Q. Did you make inquiry as to who owned the land or how long it had been settled?
A. Yes, sir.
2491 Q. How long had it been settled?
A. About 22 years.
Q. Before you bought it?
A. Yes, sir.
Q. Who did you purchase it from?
A. A man by the name of Mitzke living at Wahpeton, N. Dak.
Q. How long had Mr. Mitzke owned it?

A. That I don't know.
Q. You made no inquiry as to that?
A. No, sir.
Q. Mr. Mitzke never lived on it himself?
A. There was a tenant on there when I bought the place.
Q. Do you know how long it had been a tenant farm?
A. About six or seven years to the best of my knowledge.
Q. Do you know how much Mr. Mitzke paid for it?
A. I don't.
Q. Did you ever look at the deed to Mr. Mitzke to see what the consideration was?
A. Not the actual deed, but I got the abstract.
Q. Did you observe from that what consideration in the deed was?
A. I might have, but I don't remember.
Q. The land does not appear to have been patented until 1889. Did you make any inquiry as to who the patentee was and how long he owned the land?
A. I didn't make any inquiry as to who the patentee was, but I was told it was a man by the name of Thos. Reubish, the west quarter, and the east quarter was homesteaded, I understand
2492 by a man by the name of Burt Loomis.
Q. You don't know how long either of these patentees held it?
A. I don't.
Q. Now the east quarter you say was homesteaded by Loomis?
A. That is what I understand.
Q. Were there any buildings on that quarter when you got it?
A. There were not.
Q. Were there any appearance of buildings?
A. There was appearance that there had been buildings on the northwest quarter of that east quarter.
Q. Do you know what the character of the buildings were or when they were moved away?
A. I don't know.
Q. Nor how much Mr. Loomis got for the land?
A. I don't.
Q. Now was the town of Fairmount pretty well developed when you got this land?
A. Yes, sir, within about two-thirds of what it is to-day.
Q. Had several railroads?
A. Yes, sir, had all the railroads except this new line that was put in a few years ago.
Q. Three railroads?
A. Yes, sir.
Q. And this land lay within one mile of the village limits?
A. About one mile, yes, sir.
Q. And a perfectly straight, level, good wagon road to
2493 town?
A. Yes, sir.
Q. And you got this land in 1901, at $27 an acre?
A. Yes, sir.

Q. And you put on some new buildings, I apprehend?
A. Yes, sir.
Q. And you think, Mr. Hurdelbring, that this land went up in the thirteen years from 1901 to 1914 to four times its value at the time you got it?
A. Well, the land in this surrounding neighborhood here has all increased from three to four hundred per cent, in value since I owned this place.
Q. You think that farm values since 1901 to 1914 increased about four-fold in this locality?
A. Yes, sir.
Q. Whose land aside from your own do you think went up four-fold in value during these years?
A. All lands surrounding me close to Fairmount.
Q. What brought about that remarkable increase in the value of farm lands?

Mr. Bronson: Objected to as calling for a conclusion of the witness.

A. Well, that is something I am not familiar with. Just the transactions that took place between the time I bought and 1915.
Q. What land in this locality in 1914 sold at $100 an acre?
A. A quarter cornering me southwest, about $100 an acre, I understand.
Q. When was that sold?
2494 A. I don't just remember the year, but I think it was 1913, 1914 or 1915, somewheres along there.
Q. How much did that sell for?
A. That I couldn't positively state exactly.
Q. Any part of that land within this flooded area?
A. Not to my knowledge.
Q. Now what other land within this flooded area sold in 1914 at $100 an acre or anything like it?
A. A quarter half a mile straight north of my north line, right east of town here I understand sold for $100 an acre.
Q. Was that in this flooded area?
A. Not exactly, but adjoining it.
Q. No part of it was touched by these floods?
A. Not to my knowledge.
Q. Now I ask you if land within this flooded area in 1914 sold at $100 an acre?
A. Not to my knowledge that I know of any transactions.
Q. You don't understand of any transactions of that character whatever?
A. No, I don't.
Q. Do you think these lots 3 and 4 in section 4 increased in value from 1904, when you sold them, to 1914, five fold?
A. I didn't say that they did.
Q. You don't think they were worth $100 an acre in 1914?
A. No, there was no improvements on them.
Q. What do you think they were worth in 1914?

2495 A. I haven't thought of that at all.

Q. How much of your land has at this time no market value whatever?

A. There is about 55 acres.

Q. Where?

A. Along the southeast and east line.

Q. Why?

A. Because there is no vegetation on part of it at all and the rest is broken with cat-tails mostly.

Q. Well, you say $5.00 an acre will restore that to its former condition?

A. The work only, and if the water keeps off, the grass to reseed it.

Q. Then if it was restored to its former condition it would be worth just as much as it was before, wouldn't it, Mr. Hurdelbrink?

A. Not under those conditions.

Q. It is not flooded now?

A. But it is subject to it.

Q. It always has been?

A. Not to the extent it was in 1915, 1916 and 1917.

Q. The government plat here shows that it is land subject to overflow and always has been according to your understanding?

A. We haven't found it so during my residence there.

Q. You have resided there from 1901 to 1914?

A. Yes, sir.

Q. They were all comparatively dry years?

A. Not all, no, sir.

2496 Q. What years were wet?

A. We have had some years with a little over normal rainfall.

Q. What years were those?

A. That I have no record of.

Q. And when you had those years you had water on this land, didn't you?

A. Very little, on the southeast corner, five, six or seven acres at the outside.

Q. Now in 1906 you had water there in the spring?

A. Yes, sir.

Q. How many acres were covered that spring?

A. About 25 acres.

Q. Now in 1907 you had in the summer a little of it covered?

A. Yes, sir.

Q. How many acres?

A. About 50 acres.

Q. And that was flooded to such an extent that you lost the crop?

A. Yes, I lost the hay and pasture.

Q. Now 1908 in the spring you had water on there, did you not?

A. Yes, sir.

Q. How many acres flooded?

A. About fifty acres.

Q. And was that to such an extent that you lost the crop?

A. No, sir, the water receded and I got approximately all my crop but about seven acres.

Q. Now, 1916, Mr. Hurdelbrink, you would say, as a
2497 fair man, was an exceedingly wet year, wouldn't you?

A. Yes, sir, the rainfall was over normal in 1916.

Q. And everybody in this locality had their lands more or less affected by excessive rainfall?

A. Well, I couldn't swear to everybody. There was a good share of them.

Q. Did you ever know during your residence in this section of as much rainfall, so continuous, as it was in 1916?

A. Yes, I think in 1907, I think it was a good comparison.

Q. Do you think there was as much precipitation in 1907 as in 1916?

A. To my knowledge, I think it was about the same in this immediate locality.

Q. But the year preceding, 1906, was that a wet year?

A. Not to my knowledge.

Q. Now 1914 was a year of some excess rainfall?

A. I don't think so.

Q. Take the month of June, 1914, isn't it true that they had the highest precipitation on record?

A. We had a wet spell in the month of June, but I don't think above normal.

Q. And you had it wet in the fall of 1914?

A. Not bad, no, sir.

Q. Wasn't the river high in the fall of 1914?

A. Not to speak of.

Q. And wasn't the lake, Lake Traverse very high in the fall of 1914?

A. I don't know anything about the Lake, I wasn't down there.

2498 Q. But you say no perceptible rise in the river in the fall of 1914?

A. No, sir.

Q. Well, the year 1915 was a year of excessive rainfall was it not?

A. No, sir.

Q. Through May and June and July and August?

A. Not to my knowledge, but I do know that after the 11th day of September we had unusually heavy rains in 1915.

Q. So with an exceptionally wet fall of 1915, followed by a wet season of 1916 you would naturally expect to find more water on these lands than there ever had been before, would you not, Mr. Hurdelbrink?

A. Not if the water had not been there already, no sir.

Q. If the high water conditions, the saturated water-shed, and this excessive precipitation all through the season of 1916—with all that you would expect to find more water upon this land than you had ever seen before?

A. No, sir, I didn't if it hadn't been for the flooded conditions already on the lands

Q. Now you think with those conditions obtaining, the flood conditions of the fall before, and excessive rainfall all through the season, and these lands having been subject to overflow in the prior years that you have mentioned that that flooding of 1915 and 1916 cut down the market value of those overflowed lands from $100 an acre to absolutely nothing?

A. Yes, sir.

2499 Q. And that is the way you want to leave your testimony?

A. Yes.

Q. Have you made any effort to dispose of these flooded lands?

A. I have not.

Q. Or placed them upon the market in any way?

A. I have not.

Q. Now you figure your damages for 1916 on the 140 acres at 3.00 an acre?

A. Yes, sir.

Q. And that is on the basis of what it would have cost you to have gone out and rented more land for cropping purposes?

A. Yes, sir.

Q. Now is your land just as good for the raising of crops as Mr. Pinkney's land and Mr. Gajer's land?

A. Yes, sir.

Q. *There* land has no greater cash rental value than yours has?

A. Not cash rental value, no.

Q. Nor have any of these lands that have been spoken of here as overflowed in 1916 any greater cash rental value than yours?

A. Cultivated lands have a little greater cash value than mine.

Q. Wasn't your 140 acres cultivated land?

A. No, sir, not all.

Q. Well part of it was?

A. Yes, sir.

2500 Q. Well you put the cultivated land in at $3.00 an acre?

A. I put it in with the rest because I struck a fence across there and tried to get some pasture off of it.

Q. I mean in 1916?

A. I did get a little pasture off of a part of it late in the fall.

Q. 1916?

A. Yes, sir, about the cost of putting this fence across there.

Q. Now your cultivated land, what do you think was a fair, cash rental for 1916?

A. Well, I have no knowledge of any being rented excepting one field, I think.

Q. What did that rent for?

A. $4.00 an acre.

Q. And would you think that $4.00 an acre was a full cash rental value on cultivated land in this flooded area in 1916?

A. Yes, sir.

Redirect examination.

By Mr. Bronson:

Q. The rental values you have given have been on a cash basis?
A. Yes, sir.
Q. In 1915 and 1916 your lands that were flooded were totally incapable of use for farming as you have testified?
A. Yes, sir.
Q. Now in the years that you have been there in 1901 up
2501 to 1905 these lands that were so flooded in 1915 and 1916 were fully capable of use for farming purposes?
A. With the exception of 1907.
Q. You may state whether or not there is a big difference between those lands in the spring freshets from the melting of the winter snows resulting in the flooding temporarily, and the conditions that you had in 1915, 1916 and 1917 when these lands were incapable of use?
A. We have had those conditions several springs during my residence there.
Q. But they have not interfered with the use of your farm?
A. No sir.
Q. Counsel has spoken about the rainfall or precipitation for the years 1915 and 1916, and I will ask you to state whether or not the damages that were occasioned to your farm was by reason of this rainfall or by reason of the values that you had?
A. By reason of the floods?
Q. To what extent after the cropping season of 1914 were your lands overflowed in the fall?
A. Very little.
Q. To some extent?
A. Very little.
Q. About when did the water start to come up as you recollect?
A. Well, I have no exact knowledge of that.
Q. You cut your crops in 1914 all right?
A. Yes, sir.
Q. Counsel has asked you some questions concerning the rise in market values of the lands in this vicinity. Are you ac-
2502 quainted at all with the other lands in the state of North Dakota?
A. Yes, sir, surrounding lands I am.
Q. Not outside of Richland County?
A. No.
Q. Have you traveled any in North Dakota?
A. Not since I resided here to speak of. I went across the state two or three different times, but not on land speculating business.
Q. When did you come to the State of North Dakota?
A. March, 1902.
Q. From where?
A. Northwestern Iowa, Sioux County.

2503 ALBERT L. WADDINGTON, sworn in behalf of complainant, testified as follows:

Examined by Mr. Pinkney:

Q. What is your age?
A. 60 years old.
Q. What is your occupation?
A. Farmer.
Q. Been a farmer all of your manhood life?
A. No, sir, off and on.
Q. How long have you been engaged in the farming business?
A. About 15 years.
Q. Where have you been engaged in farming?
A. Here in North Dakota.
Q. Richland County?
A. Yes, sir.
Q. Do you own any land in Richland county, North Dakota?
A. I own 200 acres.
Q. Can you describe them?
A. Yes, sir.
Q. Describe them.
A. I own the southeast quarter of section 29 and the west half of the west half of the southwest quarter of section 28, Township 129, range 47.
Q. How long have you owned that land?
A. Since 1902.
Q. Did you acquire these lands at the same time, all of them?
A. Yes, sir.
2504 Q. In the year 1902?
A. Yes, sir.
Q. What time of the year did you locate on them?
A. In the spring of 1902.
Q. Did you farm and cultivate the lands in 1902?
A. Yes, sir.
Q. Raise crops on them?
A. Yes, sir.
Q. Harvested the crops?
A. Yes, sir.
Q. To what extent have you cropped and harvested the crops on these lands since the spring of 1902 up to the year 1916?
A. Had good fair crops.
Q. To what extent, how have you done it, every year?
A. Every year, yes, sir.
Q. All the land?
A. All the land.
Q. And what kind of crops have you raised on these lands?
A. Mostly wheat and barley and oats, some corn.
Q. Wheat, barley, oats and corn?
A. Yes, sir.
Q. And any pasture lands or hay lands?
A. Not on this piece.

Q. I am speaking of all of them now.
A. I had on 28, I had pasture and hay land all the time, never was broken up.
2505 Q. What kind of crops have you produced, that is, what has been the general yield of your crops from the time you commenced farming them in 1902 up to the year 1916?
A. You mean, what kind of a crop?
Q. No, about what kind of crops you have raised?
A. I just told you, wheat, barley and oats.
Q. That isn't what I asked you about; what kind of success did you have?
A. Had a good crop every year.
Q. In all these different grains?
A. Yes, sir, fair crops right along.
Q. Did you produce any crop on the southeast quarter of 29 in the year 1916?
A. No, sir.
Q. Why not?
A. On account of the high water.
Q. Was any part of the southeast quarter flooded in the year 1916?
A. On 29?
Q. Yes.
A. It was all flooded in 29.
Q. The whole quarter section?
A. The whole thing; I didn't put in a thing.
Q. Why didn't you?
A. Because the ground was soaked so I couldn't get on to it.
Q. Because it was flooded with water?
A. Yes, sir.
Q. Did you produce any crops on the southeast quarter of 29 in the year 1915?
A. Had a good crop, best I ever raised.
2506 Q. On the southeast quarter; did you have that all in crop?
A. All in crop.
Q. Did you harvest all of the crops on there in 1915?
A. Yes, all of the crop.
Q. Will you tell the Court what was the net value of the crop that you harvested on this southeast quarter in the year 1915?
A. It was $1,645.00. All expenses out.
Q. After deducting all expenses?
A. Yes, sir.
Q. Tell the court what kind of crops you had on this land in 1915; I am speaking of the southeast quarter of 29. What was the character of the crops?
A. Wheat, oats, barley, corn and hay.
Q. And your net returns were $1,645.00?
A. Yes, sir.
Q. And did you deduct all expenses?
A. Yes, sir.
Q. Of producing and marketing the crop?
A. Yes, sir.

Q. Leaving you with a net result?
A. Yes, sir.
Q. What in your opinion would have been the net crop rentals of this same piece of land in the year 1916, if you could have cropped it?

Mr. Palmer: That is objected to as not the proper measure of damages speculative, conjecture, witness not shown himself competent to testify.

2507 A. Same as I had it here, same as 1915, I should judge.

Mr. Pinkney:

Q. That is to say, you think——
A. I would have put in about the same I did every year, something, so much oats and wheat and so on.
Q. What would you say was the loss you sustained by reason of the flooding of these lands for the year 1916?
A. About the same as 1915, I should judge.
Q. That is to say, you sustained a loss equal to your profit on the land in 1915?
A. Yes, sir, that is what I think.
Q. You think that was a fair estimate of what you lost?
A. Yes, sir.
Q. What was the fair rental value of the land, southeast quarter of 29, for the year 1916?
A. About fifty per cent, I should think.
Q. Fifty per cent of what?
A. Of the value.
Q. Fifty per cent to the landlord and fifty per cent to the tenant?
A. Yes, sir.
Q. Does the tenant get fully fifty per cent?
A. Sometimes he gets half, sometimes forty-five per cent, sometimes fifty, the way you make the arrangement.
Q. What do you say was the fair rental value of the lands in the year 1916, this quarter section?

Mr. Palmer: Is that cash rent?
Mr. Pinkney: No, it is on the crop plan.

Q. That is the usual method of renting land on the crop plan?
2508 A. Yes, sir.
Q. Do you know anybody that leases land on cash rent?
A. Hardly ever.
Q. What do you think was the fair rental value?
A. Forty or fifty per cent.
Q. Of what?
A. Of the crop value.
Q. What crops did you figure on putting in on this land in the year 1916?
A. About the same as I always do; fifty acres of wheat, and

forty or fifty acres of oats, and right on down, thirty acres of barley and so much corn. Of course, some of it I couldn't put in, I got it seeded to hay.

Q. If you had rented this land you think it would have yielded the fair rental value one half—do you mean one half of the value of the crops you raised in 1915?

A. Yes, sir.

Q. That would be in the neighborhood of $822.50 then, wouldn't it?

A. Yes, sir, about that.

Q. You think that would be a fair rental return of the crops on that basis for the lands in the year 1916?

A. I should judge it was.

Q. Did you produce any crops on any part of this southeast quarter of 29 in the year 1917?

A. Yes, sir.

Q. Was any part of it flooded in 1917? So you couldn't produce crops?

2509 A. There was about 35 acres of it.

Q. Had you prepared that 35 acres for any crops?

A. For wheat.

Q. That is, you intended to put it in?

A. Yes, sir.

Q. What would have been the value to you of that 35 acres of wheat on the land at the time, or what would have been your rental value of that 35 acres put in wheat for the year 1917?

A. About the same as the other.

Q. Same as what other?

A. The other wheat, fifty per cent.

Q. Fifty per cent of the wheat crop produced?

A. Yes, sir.

Q. Did you compute any yield per acre for the year 1917 on that 35 acres? How much did you compute you would have per acre; wasn't it 10 bushels you computed it?

A. Yes, sir.

Q. That would be 350 bushels of wheat?

A. Yes, sir.

Q. You think you would be entitled as owner to one half of that?

A. Yes, sir.

Q. That would be 175 bushels then to you as owner, would it?

A. Yes, sir.

Q. Now did you compute what the value of the wheat would be to you if it had been produced on these lands in the year 1917?

2510 A. The government price was $2.05 a bushel. How much would that make on 175 bushels, wouldn't it have been $358.00?

A. $358.00.

Q. That is the net value of it to you?

A. I suppose it is.

Q. In that case the tenant pays all expenses except the value of the seed?

A. Yes, sir.

Q. Have you deducted that value from the——

A. Yes, sir. I deducted that.

Q. Leaving you a net value of how much?

A. $358.00.

Q. As I understand you, you put in and harvested a crop on the balance of that quarter section in the year 1917?

A. Yes, sir.

Q. Referring to the west half of the west half of the southwest quarter of 28, the forty acre tract you say you own, did you produce any crops on that in the year 1915?

A. No, sir.

Q. No part of it? Why not?

A. I couldn't get over to cut it.

Q. Why not?

A. High water, flood six feet deep; couldn't get across.

Q. What kind of crops were on that land in the year 1915, at the time it was destroyed?

A. Hay and pasture.

Q. How many acres of hay?

A. 40 acres of hay. This here hay is the 40 acres
2511 belongs to my brother and he gives me all I get of- it for enough to look after it and the pasture is mine.

Q. What was the value of the hay crop on the 40 acres at the time it was destroyed by the flood waters of 1915?

A. It was worth $120.00—$3.00 per acre.

Q. What was the value of the pasture land, what was the effect of water on the pasture land?

A. All completely covered and destroyed, had to sell all my cattle but two.

Q. What was the value of the pasture land, crop on the pasture land which was destroyed at the time it was destroyed?

$2.50.

Q. 40 acres?

A. Yes, sir, $100.

Q. Have you been testifying as to the value of the hay and pasture land on the 40 owned by your brother or on the 40 owned by you?

A. The hay on my brother and the pasture on mine.

Q. Then you had all, yours in pasture and your brother's was hay?

A. Yes, sir.

Q. That was 80 acres then?

A. Yes, sir.

Q. Was this land flooded in the year 1916?

A. Yes, sir, completely covered up.

Q. As much as in 1915?

A. Moore.

Q. Deeper water?

2512 A. Yes, sir.

Q. What was the value of the use of those lands to you in the year 1916?

A. Not anything at all, I couldn't get to them.

Q. If you could have got to them and used them, what would have been the value of the use of them to you for that year?

A. It would have been about the same as 1915, $220.00, the two of them.

Q. If they had been dry?

A. Yes, sir.

Q. And used for the same purpose?

A. Same purpose.

Q. Mr. Waddington, did you get any use of those two 40 acre tracts in the year 1917?

A. Very little, nothing on them to use.

Q. They was destroyed, crops were destroyed?

A. Just a- bare as that table, about.

Q. Did you harvest any crop then in 1917?

A. No, sir.

Q. What was the value of the crops to you on that 80 acre tract, if there had been any in 1917?

A. Same as the other, $220.00, I should judge.

Q. Used for the same purpose?

A. Same purpose, pasture and hay.

Q. What was the rental value of this 80 acre tract for hay and pasture lands such as you used them for for the years 1915, 1916 and 1917,—I believe you stated you lost the use of them all the three years?

A. Yes, sir.

2513 Q. What was the rental value per year of those lands, the hay lands and pasture lands?

A. I think it would be the same, $220.00.

Q. You figured it on the rental value?

A. Yes, sir.

Q. As their value to you?

A. Value to me.

Q. Rental value would be $3.00 per acre, per year?

A. Yes.

Q. Would that also be true as to the years 1916 and 1917?

A. Yes, sir.

Q. How many head of cattle did you have and sell on account of these pasture lands being destroyed?

A. I had 20 head, I think, I sold 14 of them, 13 or 14.

Q. Mr. Waddington, did these flood waters of 1915, 1916 and 1917, outside of destroying your crops, preventing you from using the land, did they do any damages to the land, in the way of its workable character, it- arability?

A. Yes, sir.

Q. What in your opinion would be the expense per acre of restoring these lands to the condition they were in as to workability, etc., prior to the flood waters, how much per acre, do you say?

A. I should judge about $5; took extra horses, it was so hard to plow.

Mr. Palmer:

Q. On how many acres?

Mr. Pinkney:

Q. I am talking about the 160 acres that were flooded completely in 1916 and the 40 acres that were flooded entirely in the
2514 year- 1915 and 1916 and 1917, or the 80 acres——
A. 80 acres.
Q. Acres flooded in 1915, 1916 and 1917?
A. Yes.
Q. And the quarter section was flooded in 1916?
A. Yes, sir, and part of 1917, only 35 acres put in 1917.
Q. Then that would be——
A. That ain't plowed yet.
Q. 80 acres that was flooded in the year- 1915, 1916 and 1917?
A. Yes, sir.
Q. That would be $400 on that, according to your estimate of the damages?
A. About, yes, sir.
Q. In 1916, you had the quarter section in addition to that?
A. Yes, sir. I didn't do anything on that in 1916.
Q. When you said it would cost $5 an acre to restore this land, did you have reference to all the land that was flooded?
A. Yes, that was flooded.
Q. There was 160 acres flooded, the quarter you live on, was flooded in 1916 and also the 80?
A. Yes, sir.
Q. Now, I want the 160 acres in 1916, that would be $5 an acre on that?
A. Yes, sir.
Q. According to your computation, that would be $800.00
2515 for that?
A. Yes, sir.
Q. Now, there was only 35 acres of that flooded in the year 1917?
A. That is right.
Q. You say it would be $5 an acre for that, or would you include that with the damage to the land done by the floods of 1916?
A. Yes, sir.

Mr. Palmer: You couldn't restore it each year?

Mr. Pinkney:

Q. You don't mean to figure it so much per year?
A. No, sir.
Q. Then as I understand it the expense of restoring the land would be $1,200, all told?
A. Did you figure in the 40 acres?

Q. Well, I have got that figured in this $400, or do you want to deduct that 40 acres your brother owns?
A. I would rather do that, we never plow it.
Q. Won't it cost anything to replace that other?
A. Yes.
Q. You want to take out what your brother owns?
A. Yes.
Q. That would leave it $200 instead of $400?
A. Yes, sir.
Q. That would make $1,000 damage to your land?
A. Yes, sir.
Q. Mr. Waddington, you may tell the court whether or not at any time since you have lived on this land from the year 1902 to the year 1915, you have ever seen the lands flooded like they
2516 were in the years 1915, 1916 and 1917?
A. Never did, just in the spring we have water there but it is away by the time of the seeding.
Q. Tell the court whether or not from the time you farmed these lands, from 1902 up to 1915, you have ever lost any part of your crops by reason of flood waters on these lands?
A. Never did.
Q. What do you regard as the fair market value of those two hundred acres of land owned by you?
A. I wouldn't take less than $75.00 for the quarter.
Q. Without regard to what you would take for them what do you regard as the fair market value of that quarter section?
A. $75.00.
Q. What would you regard the fair market value of the 40 acres you own in——
A. $50.00.
Q. What is the market value of these lands since the waters came upon them?
A. No market whatever that I could see.
Q. Why not?
A. Because they are afraid water will come up again.

Cross-examination.

By Mr. Palmer:

Q. Have you placed any of these lands on the market?
2517 A. No, sir.
Q. At any time?
A. No, sir. There was one time a man came by and asked me if I would take $50.00 an acre, that was several years ago.
Q. You have made no attempt to dispose of them or any part of them?
A. No, sir.
Q. What time in 1902 did you come upon this land?
A. I think it was about the 1st of April that I got in there.
Q. Did you buy the land in both 29 and 28 at one tract?

A. Yes, sir.
Q. From the same party?
A. Same parties.
Q. Whom did you purchase it from?
A. From a land company that lived in White Rock at that time.
Q. Represented by the witness Powell?
A. No, sir, well it was in the bank there but it was Rice and Halvorson was the name of them. They are not there now.
Q. How long had the land company owned it?
A. That I could not say.
Q. Did you make any inquiry about that?
A. No, sir.
Q. Was anyone living on the farm when you bought it?
A. No, sir.
2518 Q. Where there any buildings upon it?
A. One small shanty, about 10 x 14, something like that.
Q. One story?
A. Yes, sir.
Q. Just a shanty?
A. Yes, sir, used to be a school house first.
Q. Where was that?
A. On the place, on 29.
Q. Same place where your buildings are?
A. Yes, sir, sitting there yet.
Q. How long before you bought it had it been since anybody had occupied it?
A. Just the year before that, same spring they moved off, a bachelor lived there.
Q. Was he a tenant of the land company?
A. No, I think he owned it then, they sold it for him, if I understood them right.
Q. Do you know how long that occupant had lived there?
A. No, I couldn't say.
Q. Do you know what crop he raised the previous year?
A. I think he had quite a crop of flax in. I remember the flax stacks the same spring I came and there was a small patch of corn I remember.
Q. What was the quality of the corn?
A. Just about half a crop. It looked pretty fair sized ears; I think it was this flint corn.
Q. What was the quality of the flax crop?
A. Flax looked nice, nice quality, what I saw of it.
2519 Q. Flax is usually a crop that is put on when the land is broken up first?
A. Yes, sir, I think so, an awful big growth on it.
Q. Did you inquire of this occupant as to the character of crops that he had raised?
A. No, I just met him once the first day I was there and I had no talk with him whatever.
Q. How much of the land was in to flax and corn when you bought it?

A. It was all into crop; I couldn't say just what it was in. Quite a little of it improved, part of it was corn and the rest stubble field.
Q. The entire quarter section was broken up?
A. All in there all broken up except about 5 or 10 acres near the house.
Q. Was there any grove on the place?
A. No, sir, no grove.
Q. Or orchard?
A. No, sir.
Q. Any fences of any kind?
A. No, sir.
Q. Did the land have the appearance of having been cultivated for some number of years?
A. Looked as though it had been cultivated 3 or 4 years.
Q. Perhaps 3 or 4 years?
A. Yes, sir; lots of old stacks standing around so I suppose it was straw stacks.
Q. Did the party who lived there keep any stock?
A. Not a thing but his horses.
2520 Q. Did he have any barn for his horses?
A. Yes, sir, had a little barn, held about six head of horses or whatever you wanted to put in.
Q. That was a frame barn?
A. Yes, sir, frame.
Q. Substantial barn?
A. No, it wasn't very good, just a kind of board barn.
Q. Did you inquire of this occupant how much he had paid for that land?
A. No, I never did.
Q. What did you pay for it?
A. I paid $27.50 an acre.
Q. Did you make inquiry to ascertain whether that was the fair market value of the land?
A. No, sir.
Q. Did you pay cash or its equivalent or did you have a trade for it?
A. No, I paid the cash, most all of it.
Q. There was no element of trade in it?
A. No, no trade in there whatever.
Q. Did you crop it that year, of 1902?
A. Yes, sir, mostly to oats.
Q. What quality of crop did you have?
A. Very good.
Q. Did you crop it in the year 1906?
A. Yes, sir.
Q. I refer now to the quarter.
A. Yes, sir, the quarter.
Q. Did you crop it in 1907?
A. Yes, sir.
2521 Q. All of it?
A. Yes, sir.

Q. In 1908, did you crop all of it?
A. Yes, sir.
Q. You say you bought the west forty in the south half of Section 28 and your brother bought the forty adjacent to that on the east?
A. Adjoining.
Q. Did he buy that at the same time that you bought yours?
A. No, sir.
Q. When did he buy that?
A. About six years ago.
Q. About 1911?
A. Yes, sir, he bought all of that quarter, school house on the furthest corner of it.
Q. That would be about 1911?
A. I think about that.
Q. That was a very dry year?
A. Yes, sir.
Q. What did your brother pay for that quarter in 28 lying easterly of your forty?
A. $35.00.
Q. In 1911?
A. Yes, sir.
Q. Whom did he buy it from?
A. I think his name was Stafne. Eric Stefane, lives over at Abercrombie.
Q. Abercrombie, North Dakota.
A. Yes, sir.
Q. Did it have any buildings?
2522 A. A large grove and a granary.
Q. Did it have any fences?
A. No fence.
Q. Had any part of the farm been broken up?
A. All of it.
Q. Including this forty you use for hay land?
A. All but that.
Q. Who had been cropping it prior to the time your brother bought it?
A. Different parties, he rented it to them.
Q. What rent did he receive for it?
A. One half, he furnished the seed.
Q. Did he put any improvements on it, any buildings?
A. No.
Q. His tenant, then, didn't live upon the land?
A. No, didn't live there.
Q. Where did the tenant live?
A. He lived adjoining farm, one of them, and the other ones off different places within a mile or two.
Q. What returns did your brother get, do you know?
A. Some years was pretty fair crop and some years wasn't as good, about the same as the rest of it.
Q. Did he ever get as high as $800 a year?
A. I don't think so, not for his share.

Q. Did he ever get half of that?
A. I think so, yes, sir; ought to on 200 acres.
Q. He had 200 acres?
A. Well, taking this pasture and all he just got 200. Of course, he gave me the hay on that.
2523 Q. You say your brother gave you the west forty of this 200 acres, the use of it, for sort of looking after it?
A. Kind of looking after it.
Q. Did it have any fence or anything like that?
A. No, sir.
Q. What particular looking after did it need?
A. See that it was rented and cut and——
Q. You looked after the whole farm for him for the use of this forty?
A. Yes, sir. Then he owns the other quarter across the road.
Q. In what section?
A. 33.
Q. Northwest of 33?
A. Yes, sir.
Q. When did he buy that?
A. He bought that, I think 3 or 4 years ago, I don't know much about that. He bought that when he wasn't here from some man in Iowa. I don't know what he paid for it, even.
Q. Any improvements on that quarter?
A. Good house, pretty fair barn and pretty fair granary, orchard, grove.
Q. He must have bought it about 1914?
A. I think so, or maybe a little earlier.
Q. You don't know anything about how much he paid for it?
A. I know what the man asked for it at the time but I don't know what he gave for it, no, sir. He was in Iowa at that time.
2524 Q. The man who owned it lived in Iowa?
A. He lives in Kansas City, and my brother lives in Iowa and they made the deal between them in writing.
Q. How long did the man in Kansas City own it?
A. He owned it about 5 years that I know of.
Q. Do you know what he paid for it?
A. No, sir.
Q. Did he have a tenant on it?
A. His son was on, is nearest neighbor to me.
Q. All the time?
A. Yes, sir, up to the time my brother bought it.
Q. After your brother bought it, what did he do with it?
A. He rented it to a man that lives close there, first year.
Q. He rented it to a neighbor?
A. Yes, sir.
Q. Did he have any tenant in the buildings?
A. Not right then but there was a man the next year.
Q. What year?
A. I think the second year that he bought it, second year after

he bought it. I think that was it—and there was a tenant in 1915, if I remember right.

Q. The tenant who farmed the land lived there in 1915?

A. Yes, sir.

Q. The first year your brother bought it the buildings stood empty?

A. They was empty.

2525 Q. Did that tenant remain there through 1915 and 1916?

A. Yes, sir, couldn't get out, he had to stay.

Q. At any rate, he did stay?

A. Yes, sir, he did stay.

Q. He is there yet?

A. No, sir, he got out as soon as he could.

Q. When did he got out?

A. He went out when it froze up that fall.

Q. 1915?

A. Yes, sir.

Q. Was that land flooded in 1915?

A. All around it was but the land itself was not flooded much but all around it was flooded.

Q. 1916 was it flooded?

A. Same way but worse. It got into it then quite a bit, the pasture was flooded too.

Q. Where was the pasture?

A. It is on the southwest corner.

Q. What state of cultivation was this northwest of 33 in when you first knew it?

A. In a good state.

Q. Was the owner living there?

A. When I first knew it?

Q. Yes.

A. I don't remember whether he was on there then or not.

Q. What was his name?

A. His name was Shaw. He finally moved up here when he left there, he lives in town here. I don't remember whether he

2526 was on when I came or not.

Q. He sold to this man Stefne right after you came up, did he?

A. No, the man Stefne is across the road to the one we was talking about 28 that the brother brought of.

Q. Didn't you say your brother bought the northwest of 33?

A. Yes, sir, but he bought from a man by the name of Shaw in Kansas.

Q. You don't know what Shaw paid for it?

A. No, sir.

Q. I want to ask you about the quarter south of your land in 29; who owns that, the northeast of 32?

A. That would be across from 29?

Q. Yes, south.

A. I would know if I heard his name.

Q. Does he live on the land?

A. No, sir.
Q. Does he have a tenant there?
A. Yes, sir, at present there is a man plowing it all now, got it pretty near plowed.
Q. Are there buildings on there?
A. Good buildings.
Q. How long have they been there?
A. The barn was built the spring of 1915.
Q. When was the house built?
A. It was moved across from the other side onto this, off of the same section across.
Q. Hadn't been any buildings prior to 1915?
A. No, sir.
Q. Were there any fences there in 1915?
2527 A. Not very many, just a yard, I guess.
Q. Any grove or orchard?
A. Yes, a little grove, no orchard.
Q. When did this present owner get it?
A. I couldn't say when he did buy that, he hasn't had it, not over four years.
Q. Do you know what he paid for it?
A. No, sir, I do not.
Q. Do you know who he got it of?
A. No, sir.
Q. Has there been any of that land around you there sold at $75 an acre?
A. Not that I know of.
Q. Or anything like it, Mr. Waddington?
A. No, sir, not that I know of.
Q. And what is the highest at which any of these lands immediately around your land there and of the same land has sold for in recent years?
A. Well, this same piece I was just talking about in 33, this man wanted $65, that my brother bought of, but I don't know whether he gave it for it.
Q. That is what the man told you he asked for it?
A. Yes, sir, and he said he could sell it to his son or cousin or somebody, some relation.
Q. Didn't you try to buy it?
A. No, sir.
Q. Didn't you want it?
A. No, sir, I might have but I got enough.
Q. If it was worth $75 and you could get it for $65?
A. It wouldn't be worth $75 to me.
2528 Q. It wouldn't be worth $65?
A. Yes, sir, I think so, I think it would, good buildings on there, cellar, good stable and two big groves you might say, an orchard and a grove together.
Q. Good land?
A. Good land, you bet it is good land.
Q. That land wasn't flooded?

A. Not flooded but it was soaked under so you couldn't get across it.

Q. There was water around it?

A. Yes, sir.

Q. No water on it?

A. No water on it; soaked so you couldn't go across it on horseback.

Q. So was all the land in 1916?

A. Yes, sir, my land was.

Q. Take the land even west of you out of the valley was soaked in 1916?

A. I don't know how that was, I wasn't on there, I couldn't get out.

Q. Were you over in Traverse County to see how it was?

A. Indeed I was not, all I could do to get to town, go up to Blackmer on the track, I couldn't drive.

Q. I suppose there was some water on the west side of the northwest quarter of 33?

A. Yes, sir, there was quite a lot.

Q. There appears to be, Mr. Waddington, at the southwest corner of your forty in 28, and the southeast corner of your quarter in 29, a bridge?

A. Right at the bridge, southwest corner of 28 is right

2529 at the bridge.

Q. How large a bridge is that, what span?

A. Just one span but it is some twenty feet across.

Q. How much space underneath, how deep?

A. Six feet.

Q. What is that bridge there for?

A. In the spring it is so soft can't get over. Water gathers down through there from the snow; you got to have a bridge there, you couldn't cross.

Q. So it then throws water in there around that bridge?

A. Every spring.

Q. Every spring?

A. Yes, sir.

Q. Does it come up over the bridge some springs?

A. No, sir; six feet.

Q. Did it in 1915 and 1916?

A. 1916 it was just on top of it, 1915, you could look under it and see daylight under it.

Q. Which way does the span run?

A. East and west.

Q. It spans a kind of ravine?

A. Yes, sir.

Q. Or natural water way?

A. A natural waterway.

Q. Where does that—which way does the water run in that water way?

A. It comes from the southwest and runs kind of northeast, kind of kitty-corner up through there.

Q. It comes from the southwest from Lake Traverse?
2530 A. Yes, sir.
Q. And runs northeasterly?
A. Through this pasture and hay land, right in the center of them.
Q. And on through section—north half of 28, 21 and 16——
A. To the railroad track, it goes under.
Q. Goes under the railroad track?
A. Yes, sir.
Q. At the bridge?
A. Yes, sir.
Q. The bridge in 28?
A. Yes, sir, the bridge in 28.
Q. What is the size of that bridge?
A. That is the same one we are talking about.
Q. I mean the railroad bridge?
A. I couldn't say.
Q. Forty-eight foot?
A. I think so.
Q. Does that span this ravine?
A. Yes, sir.
Q. About 80 rods above that, northwest of it there seems to be another 64 foot bridge under the railroad track?
A. Yes, sir.
Q. What is that there for?
A. That was put in since this water. The water backed right up the track, right up to the elevators, they put in three of them.
Q. Put in to let the water down to the Bois de Sioux river?
A. Yes, sir.
2531 Q. There seems to be quite a number of bridges along there?
A. They put theme all in in the spring of 1915 or 1916, I don't know which.
Q. And they didn't have anything in there before?
A. No, sir.
Q. And the effect of that railroad grade was to prevent this water coming up from the southwest?
A. From backing up, I suppose, on the land.
Q. The effect was to make it back up on the land in 1915 and 1916?

Mr. Pinkney: We object to that as calling for a conclusion of the witness.

A. I think so.

Mr. Palmer:

Q. This draw or ravine that runs across your land is called one of the out-lets of Traverse Lake?
A. I think so.

Q. And when the lake is exceptionally high the water out lets to the north through that?

A. It did the last in 1915 and 1916, I never knew it to be that high.

Q. Didn't you know of water to be in the ravine before?

A. Just in the spring.

Q. It must have come from somewhere, where did it come from?

A. From snow melting and running in there.

Q. Running water?

A. No, sir.

Q. Moving?

2532 A. Nothing only when the wind would move it; you could not see it run.

Q. What was that bridge in there for?

A. Get you over, I suppose, when there was water there.

Q. Didn't the water at any time ever flow along through there?

A. I suppose when it got so high it would, I suppose, it would some but there was seldom any in there.

Q. There must have been some current to the water or it wouldn't have cut that ravine?

A. It ain't a very big ravine.

Q. How wide is it?

A. It may be six or seven feet but it isn't very deep.

Q. How deep is it?

A. It ain't over a foot any one place.

Q. Then it has a gradual slope upward, the sides of it?

A. Yes, sir.

Q. Until it gets to the level of the land again?

A. Yes.

Q. I don't understand you to say that this water that came on your land overflowed from the Bois de Sioux river?

A. No, sir.

Q. It come from the Lake?

A. Yes, sir.

Q. To the southwest?

A. Yes, sir.

Q. Do I understand that you harvested your entire crop on the southeast quarter of 29 in 1915?

2533 A. Every bit of it.

Q. Didn't you have any trouble with water conditions that year?

A. No, sir.

Q. What time did the water first come up on your southeast quarter of 29?

A. It was along about harvest time, I remember, just come up to the edge of the wheat, just one corner. I didn't leave over six or eight feet in the field, I cut every bit of the rest of it.

Q. And your crop that year was a fine quality?

A. Nice quality, best I ever raised there.

Q. You say the nicest you ever raised there?

A. Yes, sir.
Q. Now, in 1916, was a poor crop year, wasn't it?
A. It wasn't very extra good, I didn't have anything in.
Q. Nobody else had anything in?
A. I don't know as to that, some had a little some hadn't much, I didn't have any.
Q. None outside of this flooded area even?
A. Some of them off a long ways did, but not right close didn't have very much. None of my neighbors had anything as far as——
Q. Take your neighbors further west, further out of the Bois de Sioux valley?
A. They had some crop I think they threshed.
Q. About a half a crop?
A. I should judge it was.

Q. If 1915 was the best crop you ever raised and 1916 was
2534 a poor crop year, would the crops of 1916 have yielded you the same returns as 1915?

A. Well, that just depends. If it would have been the same kind of a season and I put in the same every year about, I don't see why it would not.
Q. The year 1916 was not the same kind of a season?
A. I say if it had been, that is what I went by.
Q. You assume that 1916 was as good a crop year as 1915?
A. That is what I thought it might be.
Q. But it wasn't?
A. No, it wasn't as good but the prices were better and taking it right around I——
Q. If it had been it would have been?
A. Yes, sir.
Q. 1917, was not as good a crop year as 1915 was?
A. No, sir.
Q. And yet you assume you would have received the same returns in 1917 that you did in 1915?
A. Well, I haven't got that down that way. I had 35 acres at that time and some that is in hay, seeded down, I haven't got it down that much.
Q. Lets see whether you have. You had 1,600 some odd dollars for 1915?
A. Yes, sir.
Q. That is about $10 an acre, isn't it?
A. Yes, sir.
Q. You figured the same return in 1916, about $10 an acre, did you not?
A. I think so.
Q. And then you figured the income from 35 acres in 1917 at $358.00?

2535 A. Yes, sir.
Q. That is a little over $10 an acre?
A. Yes, sir, a little over.

Q. So you figured the same returns from this land in 1915, 1916 and 1917?
A. Yes, sir.
Q. You think that is fair?
A. I think it is.
Q. Did you make any attempt to rent any land at a cash rental in the year- 1916 and 1917?
A. No, sir.
Q. Do you know anything about what the fair cash rental value of tillable lands was?
A. I do not.
Q. In 1915, 1916 and 1917?
A. I don't know of any being rented.
Q. You heard the testimony of the witness immediately preceding you, Mr. Hurdlebrink?
A. No, I didn't hear him, I wasn't here, I came up on the train.
Q. The witness immediately preceding you, Mr. Hurdlebrink, is a well-informed and reliable man, isn't he?

Mr. Bronson: Objected to as asking for a conclusion of the witness.

Mr. Palmer:

Q. What is your knowledge about it?
A. I think he is.
Q. And he states that the fair cash rental value af cultivated lands in this same locality in 1916 and 1917, was about $4 an acre——

Mr. Bronson: Objected — as not a proper statement of the evidence as given by Mr. Hurdlebrink and he did not so
2536 testify.

Mr. Palmer:

Q. Do you have any reason to doubt that?
A. That is the first time I ever heard of the kind on tillable soil, nothing but pasture I ever heard what they got for it an acre.
Q. You- price in your damages here is something over $10 an acre?
A. Yes, sir.
Q. Did you ever rent this farm or any similar one in this locality at $10 an acre?
A. No, sir.
Q. Did your brother's farm which you have testified to having looked after and collected the rentals from, immediately east of you ever yield any such rental as $10 an acre?
A. I don't think so, not for his share anyway.
Q. Or anything like it?
A. Well, I couldn't say as to that, but surely ought to have got $5 an acre out of it for his share, furnishing the seed and everything.
Q. In good years?
A. Yes, sir, I should say.

Q. Haven't any of those farms around you there to your knowledge ever been rented for cash?

A. No, sir, never since I have been there.

Q. And no tenant that you know would ever rent one of them except on a crop basis.

A. I don't know how that would be, they never have.

2537 Q. Do you know any reason why no one will rent those lands?

A. For cash?

Q. Yes, sir, for cash.

A. No, sir, I don't.

Q. You never heard in all your experience there of anybody ever renting any of them for cash rental?

A. No, sir, always been crop.

Q. I call your attention to this government plat, Defendant's Exhibit 108, and will ask you if the land indicated here on the southwest quarter of section 28 as marsh land, swamp land, corresponds substantially to the area overflowed in 1915?

A. It was all overflowed, I didn't know there was any marsh land on it though.

Q. I ask you if the land that was overflowed corresponds substantially to what is indicated here as marsh land?

A. Yes, sir.

Q. Now that west 80 acres of the southwest quarter of 28 has never been broken up?

A. No, sir.

Q. Nor has it ever had any buildings on it?

A. No, sir.

Q. Nor any fences?

A. Fences, I think he spoke about fences and posts and things, I think he did.

Q. Does this lowlying land as indicated on this government plat extend onto your land in 29 substantially as indicated on this plat?

2538 A. It doesn't extend over it whatever, there is a road between.

Q. Where was the land that was first overflowed on your land in section 29 in the fall of 1915?

A. It is on the southeast corner.

Q. And extended gradually up to the eastern edge of the farm?

A. Yes, sir, just a little west on that side. The worst of my damage is on the west side of my quarter next to Mr. Sauter.

Q. Now, there is another draw or ravine coming up from the south and the west, that is from Traverse lake, on 29, Mr. Sauter's land?

A. Yes, sir.

Q. And that goes about to the center of Mr. Sauter's southwest quarter of 29?

A. Yes, sir.

Q. That you say overflowed and come onto your land on the westerly side and southerly side?

A. No, it didn't come up that far.

Q. What part of your land on the west was overflowed?
A. Just a little bit right—a little slough comes up here and comes in and makes a turn like that (indicating).
Q. There is a little slough that comes up from section 32 and crosses the south line of 29 about at the quarter line?
A. Yes, sir, pretty close.
Q. And comes up in your land?
A. Yes, sir, a little.
Q. That slough filled first?
2539 A. Well, it backed up that slough from the other sloughs, filled up and backed up in there but didn't go very far, about half an acre?
Q. Now, 1915, Mr. Waddington, was a wet season?
A. Yes, sir.
Q. And the fall of 1915 was a wet fall?
A. Middling wet, yes, sir.
Q. And the year 1916 was an extremely wet year?
A. It was some wetter, yes, sir.
Q. These damages that you have stated here have been given by you with the expectation of recovering them from the State of North Dakota?
A. Yes, sir.
Q. In case the State of North Dakota recovers damages from Minnesota?
A. Yes, sir.
Q. And for that reason, you have contributed, have you not, a sum of money toward the expense of instituting and maintaining this action?
A. Yes, sir.

Redirect examination.

By Mr. Pinkney:

Q. You have been asked with reference to these waters that came up there in the years 1915, 1916 and 1917; where did the waters come from?
A. Lake Traverse.
Q. From the south?
2540 A. Backed right up the sloughs there.
Q. And how deep about were the waters on your place there in 1916, the deepest place you know of?
A. Well, on the pasture there was from 3 to 6 feet.
Q. And how long did they stay there in the year 1916?
A. They stayed there all the season and then some.
Q. Into the fall?
A. Yes, sir.
Q. Were they all off?
A. Wasn't off when it froze up.
Q. And they were there in 1917 weren't they, some of them?
A. Yes, sir, quite a lot. We had plenty of duck shooting.

Q. You spoke of the summer of 1915 being a wet season, or somewhat wet. Isn't it true that the summer of 1915 was comparatively dry?

A. Part of it, yes, sir.

Q. And the wet season didn't set in until the fall of that year?

A. That fall, quite excessive rains.

Q. You stated also that these waters overflowed the place in the fall of 1914, late in the fall?

A. Yes, sir, they came up to the bridge in that fall in 1914.

Q. Was the fall of 1914 a wet season, that you know of?

A. No, it was dry, I remember that well.

2541 Q. It is also true, isn't it, Mr. Waddington, that the flood waters there in the year 1916 began to recede and did recede some during the time of your heaviest rainfall, isn't that true?

A. Yes, sir.

Q. When you gave your figures of the losses that you sustained for the years 1916 and 1917, I will ask you to state if you did not give them on the basis of the rental value of the land to you rather than the cash value?

A. Yes, sir, rental value.

Q. And you never heard of lands being rented for cash?

A. Never, not while I have been there.

Q. I will ask you to state if you did not compute that grain on your 35 acres for the year 1917 on the basis of the yield of other lands in your locality, to-wit, about 10 bushels an acre?

A. Yes, sir.

Q. And did you not also compute it on the market price of wheat at that time?

A. Yes, sir.

Q. Is it an unusual thing for a farm in North Dakota in a fairly good season to produce $1,645 of grain on a quarter section of land?

A. I don't think so.

Q. Don't you know from your own experience?

A Yes, sir.

Q You have done it more than once?

A. Yes, sir.

Q. Your lands are no better, generally speaking than all these lands in the flooded area?

2542 A. Nobody thinks so.

Q. What do you think about it?

A I don't think they are any better than anybody else.

Q You know the lands in this flooded territory pretty well?

A. Yes, sir, hunted all over them.

Q. They are all of the same general character, are they not, so far as soil conditions are concerned?

A. Yes, sir.

Q Character of soil?

A. Yes, sir.

Q. And produce about the same character of crops?

A. Yes, sir.

Q. You spoke of some fences, Mr. Waddington, on your direct

examination. Did you have any fences destroyed by the flood waters of 1915 and 1916 or 1917 on your land?

A. I think I did.

Q. How many rods did you have destroyed?

A. I had 240 rods destroyed.

Q. What kind of fences were they?

A. Three wire.

Q. What kinds of posts?

A. Cedar posts.

Q. Do you know what would be the value per rod of replacing that 240 rods of fence?

A. I set it at 15 for the wire and 20 each for the posts.

Q. That would be how many posts to the rod?

A. A rod apart.

2543 Q. That would be 40¢ for the posts and 15 cents for the wire, 55 cents?

A. Yes, sir.

Q. What would be the value of the labor?

A. They charge 3 cents a post for setting them.

Q. Charge anything for stringing the wire?

A. No, that is included, I think.

Q. That would be 58 cents a rod then wouldn't it?

A. Yes, sir.

Q. About $140, then, wouldn't it?

A. Yes, sir.

Mr. Bronson:

Q. Counsel asked you a question about contributing to a fund for prosecution of this action. I will ask you the general question if you do not expect the State of North Dakota, as a citizen of North Dakota to protect you in your property rights and try to relieve you of the damage that you have suffered by reason of the flood waters that you have testified to in this action against the State of Minnesota?

A. Yes, sir.

Q. And never during the time you have farmed down there, have you been subjected to the flood water from Lake Traverse as you have during the years 1915, 1916 and 1917?

A. No, sir, never.

Recross-examination.

By Mr. Palmer:

2544 Q. If you expect the State of North Dakota to pro- you in your property rights why did you have to contribute money towards the expense of maintaining this suit?

A. They ought to look after you a litttle if they let you have land.

FRITZ QUIDING, being sworn in behalf of complainant, testified as follows.

Examined by Mr. Bronson:

Q. What is your name?
A. Fritz Quidding.
Q. State you- age, residence, business or occupation?
A. 62 years, farming.
Q. Residence?
A. In Minnesota, Brock Park.
Q. Pine County?
A. Yes, sir.
Q. You may state whether or not you formerly were the owner of lands in section 22, township 129, range 47, in Fairmount township this state, adjacent to the Bois de Sioux river, particularly described as Lots 1, 2, 3, and 4 consisting of about 127 plus acres, and lots 4 in section 27, same township and range, consisting of about 45½ more or less acres?
A. Yes, sir.

Q. You may state whether or not you bought these lands in
2545 section 22 in the year 1902 and in section 27 in the year 1903?
A. Yes, sir.

Q. You may state whether or not for these lands in section 22 you paid $24 per acre and for those lands in section 27 you paid $35 per acre?
A. Yes, sir.
Q. You may state whether or not you owned such lands until the year 1913?
A. Yes, sir.
Q. And whether you sold in said year such lands to one R. R. Unz for $48 per acre?
A. Yes, sir.
Q. You may state whether after you sold these lands to R. R. Unz in the year 1913, you were then in occupation of such lands and remained in occupation of such lands during the year following, 1914, and the year 1915?
A. Yes, sir.
Q. And whether or not after such sale you remained on such land as an occupant of the same and farming the same under a cropper's contract or leasing method whereby, generally speaking, one-third of the crop returns were to go to such owner and two-thirds to you?
A. Yes, sir.
Q. Excepting some corn ground and pasture land?
A. Yes, sir.
Q. For which a different arrangement was made?
A. Yes, sir.
Q. You may state w-ether or not from the year 1902 up to and including the year 1913 you occupied and farmed these lands that you have described?

2546 A. Yes, sir.
Q. You may state whether or not——
A. I sold in 1914, February.
Q. To Unz?
A. Yes, sir.

Q. The date of sale to Mr. Unz was in February 1914 instead of in the year 1913?

A. Yes, sir.

Q. Otherwise your testimony is as you have stated?

A. Yes, sir.

Q. You may state whether or not during the time that you owned and farmed this land there was broken up on section 22 all of it excepting about 15 acres of hay and 10 acres of pasture?

A. Yes, sir.

Q. You may state whether or not on section 27 during such period there was broken up about 25 acres with the balance being in hay land?

A. Yes, sir.

Q. You may state whether or not from the year 1902 up to and including the year 1914 you had cropped and farmed that land each and every year?

A. Yes, sir.

Q. And raised crops on it?

A. Yes, sir.

Q. Crops of wheat?

A. Wheat, oats, barley, flax, corn and millet.

Q. You may state the yields that you had secured, generally speaking, on these lands during those years; how much of wheat would you get or have you ever got?

2547 A. I put in 20 bushels, I got up to 25 some years, about.

Q. And what returns had you secured of oats?

A. Oh, I had up to 65 or 70 bushels.

Q. And what of flax?

A. Flax, I had 15 bushels to the acre.

Q. You have secured as much as 15 bushels to the acre?

A. Yes, sir, they raised as high on that piece of land, 22 and 24 bushels one year after another; 22 bushels of flax in the one year and I seeded some pieces of land, about 24.

Q. Do you mean to testify that you had received from this land as high as 24 bushels of flax?

A. No, I didn't get it but I heard they had raised it before but I raised 15 bushels.

Q. You know you have got as high as 15 bushels per acre?

A. Yes, sir.

Q. Now, this land that you have described lies next to the river?

A. Yes, sir.

Q. The Bois de Sioux river?

A. Yes, sir.

Q. Some of it a little low?

A. Yes, sir, some of it a little lot.

Q. And some of it overflowed before the year 1915?

A. Yes, sir, it overflowed but the water went off again.

Q. I understand generally speaking then that this land that you have described was all broken up as you have mentioned

2548 before you got it?

A. Yes, sir.

Q. Mr. Unz, I understand lives in Truman, Minnesota?
A. Yes, sir.
Q. You may state whether or not in the year 1915, in the usual cropping season you put into crop on section 22 of this land approximately 50 acres of wheat, 30 acres of oats, 20 acres of corn, balance about 15 acres of hay land and 12 plus acres of pasture on this land; in section 27, approximately 25 acres of wheat, balance 20 plus acres of pasture and hay land?
A. Yes, sir.

(Recess until 1:15 p. m. Nov. 9, 1917.)

Nov. 9, 1917, 1:30 p. m., pursuant to adjournment hearing resumed, with all parties present.

Direct examination of FRITZ QUIDING, a witness for complainant, resumed.

By Mr. Bronson:

Q. You may state whether or not in the year 1915 the waters came in on this land that you have described and overflowed your crops?
A. Yes, sir.
Q. All of them?
A. Yes, sir.
Q. You may state whether or not your crops that you had in on these lands in 1915 were destroyed by these flood waters?
A. Yes, sir.
2549 Q. You may also state whether or not you did cut by picking out little pieces here and there out of the water something like 18 bushels of wheat?
A. Yes, sir.
Q. You may state whether or not you have made a computation of the actual crop values for the year 1915 on these crops so destroyed?
A. Yes, sir.
Q. At the time they were so destroyed by the floods?
A. Yes, sir.
Q. To shorten the record, I will ask you to state whether or not this computation that you made is as *g*ollows: 50 acres of wheat, average yield, 20 bushels per acre, market price, $1.00, gross $1,000; 30 acres of oats average yield 50 bushel per acre, market price 45 cents, gross $675. This on lands on section 22. 25 acres of wheat, average yield 20 bushel per acre, market price one dollar, gross $500; total gross, $2,220. In addition 20 acres of corn, value on field $7.00 an acre, $140; also twelve acres of pasture, value $36.00; also 20 acres of pasture, value $60, of which under your leasing or cropper's contract arrangement, you were to receive two-thirds or $1,680?
A. Yes, sir.
Q. From which amounts you have deducted as expenses the items for cutting, threshing, shocking and marketing, a total of $275.25,

leaving a net loss or damage of $1,440.75 as the value of these crops so destroyed on these lands in the year 1915 by these flood conditions?

A. Yes, sir.

Q. As I understood you to say, one-third of the wheat
2550 and oats crop went to the owner of the land on the contract?

A. Yes, sir.

Q. I will ask you to state also whether or not you did not also farm in the year 1915 the land situated in Fairmount township in 129 range 47, known as the Northeast quarter of Section 28, the L. D. Butts land?

A. Yes, sir.

Q. I will ask you to state whether or not likewise in the year 1915 you had any crop on this land that was destroyed by these flood waters?

A. 65 acres of wheat, approximately 20 acres of oats and 20 acres of corn.

Q. I will ask you to state also whether or not you had this land, the said northeast quarter, under a cropper's arrangement with Mr. Butts, three-fourths to you and one fourth to Mr. Butts, the owner?

A. Yes, sir.

Q. I will ask you to state whether or not you have made the following computations of the value of these crops so destroyed by these flood waters in the year 1915 at the time they were so destroyed on said last described lands, as follows: 65 acres of wheat, average yield 20 bushel- per acre, market price $1.00 per bushel, gross $1,300; 40 acres of oats, average yield 50 bushel- per acre, market price 45 cents, gross $900; total $2,200, out of which, pursuant to the agreement, as you have testified, you received three-fourths or $1,650, and the owner, the balance, or one-fourth, $550?

A. Yes, sir.

2551 Q. As the proportionate share of each for such crops if they had been raised?

A. Yes, sir.

Q. From which you have made in your comp-lation deductions as follows, for cutting, shocking, harvesting, threshing and marketing, a total of $269?

A. Yes, sir.

Q. Leaving a net loss or damage in accordance with such computation of $1,381?

A. Yes, sir.

Q. In addition to that there is corn on the 20 acres of the value, as you have stated, of $7.00 per acre, total $140, for which you paid a cash rental for such land?

A. Yes, sir.

Q. That would make, with the corn added in, a total of $1,521 damages to the crop of 1915 on your land?

A. Yes, sir.

Q. You may state whether or not you cut a few oats on this quarter section in 1915?

A. Yes, sir.

Q. In addition to the six acres of oats that you have put in under your claim for loss sustained?

A. Yes, sir.

Q. About how many acres?

A. Well, I think it was about six acres.

Q. How did you cut that?

A. Well, to get in I took two poles and laid a plank over the poles and cut them that way. It was cut late in August.

Q. You cut them as best you could?

A. Yes, sir.

2552 Q. And there was some water on them?

A. No.

Q. No water on the oats you cut?

A. No.

Q. But the ground was wet?

A. Yes, sir.

Q. Did you get about three hundred bushel-?

A. Yes, I got three hundred bushel.

Q. Now on all of these lands that you have mentioned that were in crop in 1915 what kind of crop was there standing and growing at the time these flood waters came on?

A. It was fine then.

Q. How was the wheat?

A. The wheat was nice, about two or three weeks more it would have been matured.

Q. And how was the oats?

A. The same way.

Q. How was the corn?

A. That wasn't quite so good, but it was pretty fair corn.

Q. Did you take into consideration in figuring what your yield would have been the average yield per acre on lands in that neighborhood for wheat and oats that year?

A. No, I didn't.

Q. How did you figure it?

A. I figure on my own crop.

Q. The stand that you had?

A. Yes, sir.

Q. Existing at that time?

A. Yes, sir, other land in the neighborhood was destroyed by water, too.

2553 Q. You could tell from the way the wheat stood and the other crops stood what yield it promised, could you not?

A. Yes, sir, I could. If I could have cut it it would have went better than 20 bushels for the wheat that year.

Q. Are you acquainted with the land known as the northeast quarter of 21?

A. Yes, sir.

Q. Have you seen crops raised on that land during the years you were farming on your land up to the year 1915?

A. No, sir.

Q. Was that not farmed?
A. Well, it was farmed, but not raised so good a crop as mine. There was more holes in the land, more pockets that you couldn't farm.
Q. Was that land flooded in 1915?
A. Yes, sir.
Q. By these waters?
A. Yes, sir.
Q. When these waters came on in 1915 were you living on these lands?
A. Yes, sir.
Q. You are a married man?
A. Yes, sir.
Q. With a family?
A. Yes, sir.
Q. How many children?
A. Four.
Q. Did you have some buildings on this land in sec. 22?
A. Yes, sir.
Q. Barn?
2554 A. Yes, sir.
Q. Granary?
A. Yes, sir.
Q. House?
A. Yes, sir.
Q. What else?
A. Wagon shed.
Q. What did you do after the waters came up?
A. Well, I had to get in a boat and go up to the next building. I had the Butts farm so I moved in.
Q. You had to move out with a boat?
A. Yes, sir. The water came up in a hurry and I tried to bank it up to hold the water back, but it came in so fast I got in the boat and got out.
Q. When did you go away to Minnesota?
A. I went away last spring.
Q. 1916?
A. Yes, sir, the 25th of March, I think.
Q. So you didn't see the waters in 1916 on these lands that are in this flooded district, if there was any on them?
A. No, sir.

Cross-examination.

By Mr. Palmer:

Q. What time in 1916 did you move to Minnesota?
A. Well, if I ain't mistaken it was the last part of March.
Q. At that time did you move on to a farm in Pine county, Minnesota?
A. Yes, sir.
Q. Did you move your family then?

A. Yes, sir.

2555 Q. Have you resided in Pine County, Minnesota, with your family ever since?

A. Yes, sir.

Q. Do you intend to make Minnesota your home?

A. Yes, sir.

Q. These damages that you have given here do you expect to get them?

A. Yes, if I can.

Q. You expect if North Dakota gets the money from the state of Minnesota in this suit that North Dakota will give you your damages?

A. Well, I was in North Dakota the time the flood was here and I farmed that time and I had to get out and go somewheres. I couldn't live in the water.

Q. You don't answer my question.

(Question repeated.)

A. Yes.

Q. And for that purpose you have paid money toward the expense of bringing this suit, haven't you?

A. Yes, sir.

Q. Did you pay that money after you moved to Minnesota?

A. Yes, sir, I paid that money when I was here, before I went.

Q. You paid it before you went to Minnesota?

A. Yes, sir.

Q. When did you pay that money?

A. I paid it last spring.

Q. 1917?

A. No, 1916.

2556 Q. A year ago last spring?

A. Yes, sir. I left in 1916 and I paid it before. I paid it before when I was here. I didn't buy no land up in Pine county. I rented up there.

Q. What time in 1902 did you move on to this land?

A. I came there in the spring, in 1902; I bought the land; in 1903 I moved on in the spring.

Q. Where did you move from?

A. The southern part of Minnesota, Martin County.

Q. In the spring of 1903 you moved on this land?

A. Yes, sir.

Q. And you say that was lots 1, 2, 3 and 4 in section 22?

A. Yes, sir.

Q. And lot 4 in section 27-129-47?

A. Yes, sir.

Q. For the land in 22 you paid $24?

A. Yes, sir.

Q. Per acre?

A. Yes, sir.

Q. Did you pay cash or did you trade something?

A. No, I paid cash, except $500 that was against it. I didn't pay that right away.

Q. You assumed the encumberance of $500 and paid the rest in cash?
A. No, I paid all in cash except $500 mortgage.
Q. And did you buy the land in section 27 at the same time?
A. No.
Q. What year did you buy that?
A. I bought that in the same year I came, 1903, in the
2557 fall.
Q. And you paid $35 an acre for that?
A. Yes, sir.
Q. Whom did you buy this land from in 22?
A. From a fellow named Henry Gustafson.
Q. Did he live on the land?
A. No he had rented it. He had a store in White Rock, a clothing store.
Q. He had the land rented?
A. Yes, he had it rented.
Q. Whom did you buy the land in 27 from?
A. From a fellow by the name of L. D. Butts.
Q. Did he live on the land?
A. No.
Q. Where does he live?
A. In Iowa, Fremont, Iowa.
Q. Has he ever lived out here in North Dakota?
A. No, he has not.
Q. During all the time you have known him he has lived in Iowa?
A. Well, he got a farm in Texas too.
Q. But he has lived in Iowa?
A. Yes, he got his family there, but he goes to Texas in the winter. He has poor health.
Q. He never has lived in North Dakota?
A. No, he couldn't. He was sick.
Q. Were there any buildings on this land in 22 when you got it?
A. There was a granary and a house.
Q. How much of a granary?
A. That was 16 x 28.
2558 Q. Have stone foundation?
A. No.
Q. Set up on posts?
A. Well, had a little stone here and there, but I put a foundation under it.
Q. Is that granary there yet?
A. No, it blowed off—the tornado took it this summer.
Q. A wind storm blew it down?
A. Yes.
Q. When was that blown down?
A. I think it must be this summer or last summer, I couldn't tell which.
Q. Was ther[illegible]ouse on there when you bought it?
A. Yes, [illegible] there yet.
Q. How big is that house?

A. 14 x 22.
Q. Two stories?
A. Well, it is a story and a half.
Q. A little attic up-stairs?
A. Yes, sir.
Q. Did that set on a stone foundation?
A. Yes, sir.
Q. And it is there yet?
A. Yes, sir.
Q. It is in pretty good shape?
A. Yes, it wasn't first class, but it was pretty good. I lived there thirteen years.
Q. Was there a barn?
A. I built a barn. It was only a shed there when I came there.
2559 Q. Was there any other building except the house and granary when you got it?
A. Yes, there was some shed.
Q. How much of a barn did you build?
A. At that time that barn came to $700.
Q. What was the size of it?
A. It was 26 feet wide by 44 feet long, and I had a 16 foot lean-to on the side.
Q. Stone foundation?
A. About 2 feet, I guess.
Q. A stone foundation about 2 feet high?
A. Yes, sir.
Q. Now, where *these* these buildings stand?
A. On lot one.
Q. What part of lot 1?
A. Well, there stand on the south close to the road. It must be about 120 rods from the road.
Q. North of the east and west road?
A. Yes, sir.
Q. They were down in the southwest corner of the lot?
A. Yes, sir.
Q. Now didn't you have some trouble with the man that you bought the land of as to whether these buildings belonged with that land or not?
A. No, not on 22. I didn't have no bother with nobody.
Q. Did you have some trouble about the buildings on the land in 27?
A. No, I didn't.
2560 Q. Were there any buildings on there when you bought it?
A. No, sir.
Q. Now you know that Otto Anderson farmed just west of lot-1 and 2?
A. Yes, sir.
Q. Did that have buildings on it too?
A. Yes, sir.

Q. Those buildings there yet?
A. Yes, sir.
Q. Now these buildings on this, were they painted?
A. Yes, sir, twice.
Q. Is anybody living there now?
A. I couldn't tell that.
Q. Has anybody lived there since you moved out?
A. I couldn't tell that either because I haven't been there.
Q. Now, you moved up there in 1903?
A. Yes, sir, in 1903, I moved there.
Q. How much of the land was broken up?
A. All of it.
Q. That is all except the hay land?
A. Yes, sir.
Q. And pasture land?
A. Yes, sir.
Q. How long before anybody had lived there when you moved in?
A. Well, I guess it was over a year. There was a fellow moved out.
Q. A fellow moved out a year before you moved on?
A. Yes, sir.
2561 Q. Where did that fellow move to?
A. I couldn't tell?
Q. He didn't own the land?
A. No, that farm was rented out to the neighbor.
Q. Who was the neighbor?
A. *He* name was Julene.
Q. He lived on the northeast of 21?
A. Yes, sir.
Q. Ole Julene?
A. Yes, sir.
Q. Is Ole there now?
A. No, he moved.
Q. When did he go?
A. He moved about 1902, I guess. I guess he moved that fall or in the spring. He was out of there when I came there.
Q. Do you know where he went?
A. No.
Q. He has never been back?
A. No, I guess not. I never seen him.
Q. What kind of crop did Julene have on there in 1902?
A. Well, he had a pretty fair crop there.
Q. What kind?
A. He had some oats and some barley and some flax. At that time when I came up.
Q. What year was it that you raised as high as 25 bushel to the acre?
A. It was in 1914, but I didn't raise that on every piece but on the piece where I kept track on. I had corn there the year
2562 before.
Q. Is that the year you raised 65 bushel of oats to the acre?

A. Yes, sir.
Q. 15 bushel of flax?
A. Yes, sir.
Q. Now other years, the year 1907, that would be 4 years after you went up there—did you have a pretty good crop that year?
A. Pretty fair, but not so good as others.
Q. What was the matter?
A. Well, there was nothing the matter.
Q. Water?
A. No, there was no water. It was a wet season, but there was no water on it. It was wet in the spring.
Q. Now when it was a wet season you didn't have as good a crop as you did when it was dry?
A. No.
Q. And some springs the water would get up on the land some?
A. Yes, they came up quite a bit, but it went off again so I could seed.
Q. Would it come up quite a bit?
A. Oh, yes.
Q. Now you think that you would have raised on this land in 1915, about $1,800 worth of crop?
A. Yes, sir, I figure more than that when I seen the crop growing before the flood came.
Q. That is a little over $10 an acre?
A. Yes, sir.
Q. That would be nearly fifty per cent of what you paid
2563 for the land. You would consider that pretty good returns, wouldn't you?
A. There was some expense to work it?
Q. You and the land-lord together would have got about $1,800 and you would have got about $1,400?
A. Yes, sir.
Q. Now, you would consider that a very good return, $10 an acre net on the land?
A. Yes, sir.
Q. And you say that in 1914 in February after you had got your big crop you went and sold that land for $48 an acre?
A. Yes, sir.
Q. What did you do that for?
A. I wanted some more land, if I could have got the land I thought I was going to buy—a half section.
Q. You wanted to buy some more land?
A. Yes, sir.
Q. Intended to buy half a section?
A. Yes, sir, but this fellow wanted my farm.
Q. Where did this fellow live?
A. R. B. Uns.
Q. Whereabouts did he live?
A. Truman County, Minnesota.
Q. Farmer down there?
A. Yes, sir.

Q. Spent a good many years there?
A. Yes, sir.
Q. He never lived here in North Dakota?
A. No.
2564 Q. How did he come to look at your land?
A. Well his wife had a sister living close by, and she asked if I didn't want to sell my farm, and I said, yes, I don't care. And she wrote back to her sister about that, and she say, how much do you want, and I say, $48 an acre, and he came two days after and I took him all over the land. Hitched up the horses and drove all over, and it was all plowed, and that was in the spring, and when I came in I put the horses in the barn and he went and made out a check for $500.
Q. And he paid you practically cash for the land?
A. Well, there was $2,400 against it so I carried $2,400 for two years, and he finally paid it.
Q. And you figured you say on buying a half section?
A. Yes, sir.
Q. Did you buy any more land?
A. No, I went up in Pine county.
Q. You didn't buy any land up there?
A. I bought this winter.
Q. Now when you made him this price of $48 an acre for the land, did you consider that a pretty good price?
A. No, that wasn't enough, that was cheap.
Q. Yet that was the price that you made him?
A. That was the price that I made him and I have to take it.
Q. Well, you made him that price without talk or negotiations?
A. Just the letter.
Q. Just told him that is what you wanted and he said he would give it?
2565 A. Yes, sir.
Q. Then you rented the land from him for 1915, and farmed it your self?
A. 1914 and 1915.
Q. Now, this piece of land that you rented in 1915, had you rented that before?
A. For nine years.
Q. And always on terms of ¼ to Mr. Butts?
A. Yes, sir.
Q. Was Butts satisfied with that?
A. Yes, sir. I paid all expenses.
Q. And he was satisfied with one-quarter?
A. Yes, sir.
Q. Did you have pretty big crops there?
A. Pretty fair crops that year.
Q. Every year?
A. Yes, sir.
Q. Was this all the plow land that you had on that quarter—sixty five acres of wheat, forty acres of oats and twenty acres of corn?

A. Yes, that was all plow land. I couldn't put any more in that spring because I was alone.

Q. Was the rest of it in hay and pasture?

A. Yes, sir, I had a pasture there.

Q. Were there any buildings on that Butts land?

A. Big buildings.

Q. Aren't the buildings over west of the road?

A. East of the road.

Q. How long did Butts own this land do you know?

A. 1903.

2566 Q. Did you rent all of this Butts land in 28?

A. Yes, sir, I rented it all.

Q. Well, that is a good deal more than the northeast quarter?

A. Well I had the whole farm, and I could work so much I wanted, and if I couldn't work it all I could rent it out to somebody else and let them run it.

Q. Did you work it all or rent it out?

A. I rented out sometime to somebody else if anyone can work more than they got, and I looked after it and sent the money.

Q. Then all this land is 28 and 27, belonging to Mr. Butts, as marked here on the map, you had charge of?

A. Yes, sir.

Q. Now what did you give him for the land?

A. I gave him what was coming to him.

Q. Just a quarter—how much was coming to him?

A. Well, sometimes it was more and sometimes it was less.

Q. Just a quarter of the whole crop, is that it?

A. I gave him one-quarter out of that land.

Q. That one-quarter rental arrangement covered all of his land in 28?

A. Yes, I rented it out some.

Q. When you rented out hay land what did you get for it?

A. Well, I didn't rent any hay land. I cut that myself.

Q. Did you give Mr. Butts a quarter of the hay?

A. No, sir, he gave me it all.

2567 Q. Just gave that *you to* outright?

A. I was looking after the buildings and looking after everything, and he says you cut the hay.

Q. Now you gave Mr. Butts then on all this land in 28 and 27, a quarter of the crop?

A. Yes, sir.

Q. And for the hay and pasture land you paid him nothing whatever. Is that right?

A. No, I didn't pay him anything for the hay and pasture, because I worked out the road tax.

Q. Now how is it that you figured that your hay land up in 22 and 27 was worth $3 an acre?

A. That is what it was.

Q. Was this hay and pasture land on Butts farm just as good as that on yours?

A. It was just as good, but it was quite a ways from me so I didn't

care if I got it or not. I wouldn't pay anything for it. It was quite a ways away from me. Sometimes I didn't have stock enough to use it all.

Q. When you didn't use the hay and pasture land on the Butts farm what became of it? Did it grow up to weeds?

A. No, it didn't.

Q. Who got it?

A. We didn't cut the pasture.

Q. Did you pasture it?

A. I pastured some of it, but I cut the hay through but the pasture I left somebody else put cattle in. I didn't have enough to fill up that pasture.

Q. Did you charge your neighbors anything?

A. No, sir.

2568 Q. You let them put their cattle in for nothing?

A. Yes.

Q. Just to be a good fellow?

A. Yes, sir.

Q. Was there a good deal of pasture and hay ground on this piece of land?

A. Quite a bit.

Q. More than half of it?

A. Oh, no.

Q. You think there was half of all this Butts land in 27 and 28 that was under cultivation?

A. Well, no, there was more under cultivation than hay land.

Q. How much more?

A. I couldn't tell. I didn't measure.

Q. Just is a general way?

A. Well, I measure what I put in and I know how much I put in, and I know what the lands was.

Q. Now in this Butts land there was 400 acres, wasn't there?

A. Something like it, but I guess he sold 27 acres. He sold lot 4 to me, and then he didn't own that.

Q. But that left him 400 acres, didn't it?

A. No, I don't think it did.

Q. There was all of the north half of 28, that would be 320 acres?

A. Yes.

Q. And there was the east half of the southeast quarter, which was 80 acres?

A. Yes.

2569 Q. Now that made 400 acres in 28. Then he had three forty-s in 27, didn't he?

A. I guess he had some. He had sold some lands there.

Q. And then he had lot 3?

A. Yes, sir.

Q. That appears to be 26 acres?

A. Yes, sir.

Q. That is 546 acres that Mr. Butts had after he sold you lot 4?

A. Well, I ask Mr. Butts one time when he was down how much

he had and if I ain't mistaken he said 380 acres. And this is kind of funny to me.

Q. Now did you farm the whole of the north half of 28?

A. Yes, I farmed it.

Q. Now did you farm the east half of the southeast quarter of 28?

A. No, I didn't.

Q. Who did?

A. Well, sometime I farm it and some time I don't. I farmed all of that.

Q. Did you have charge of it under this arrangement?

A. Yes, sir. I could farm as much as I want to.

Q. Now did you have charge there of these three forty-s in 27?

A. Yes, sir.

Q. And this lot 3?

A. Yes.

Q. How much plow land was on this north half of 28?

A. I don't know how much.

2570 Q. About how much?

A. Well, lot 3, there was nothing plowed on that. And then there was forty acres by the school house in pasture and then there was some land along the river that wasn't plowed—hay land.

Q. How many acres?

A. I couldn't tell.

Q. Did you have any of these forties broken up?

A. Yes.

Q. How many acres?

A. Well, I don't know.

Q. About how many?

A. Well, I know there was somewhere around eighty acres. He had it in so many pieces there, some lots and homesteaded. I never kept track of it, and I don't know anything about it because I never said anything to him and he didn't describe his land or anything to me. I could go ahead and work where I wanted to.

Q. Were you the only person that had this land in charge for Mr. Butts?

A. I did it at that time for that nine years.

Q. That would leave forty acres in the three forties. Now the north half of twenty-eight—how much of that was plow land?

A. I couldn't tell.

Q. About how much—half of it?

A. Yes.

Q. More than half of it?

A. Yes, more than that.

Q. How much more than half?

2571 A. I couldn't tell how much more because I didn't measure.

Q. Do you know how many acres of hay or pasture land?

A. No, sir, I never measured.

Q. Have you given us a description of all the crops you had on 28 in 1915?

A. Yes, sir.

Q. That you say were lost?

A. Yes, sir.

Q. Now did you have any crops ever on 27 in 1915?

A. No, I didn't. Only I had my own lot.

Q. 1915 in the spring was a good spring, wasn't it?

A. It was a fine spring.

Q. Did you put in any of the Butts land in 1915, did you put in about the same amount of that you always put in?

A. No, sometimes I put in more on the Butts land.

Q. Well, it was a good spring you say?

A. Well, it was a good spring, but I had a son that went to school and got sick and got in the hospital and when we was starting to work in seeding my wife had to go and that left me without a housekeeper or anything. And I only had one small boy and I couldn't farm any more, else I would have put in more.

Q. Did you leave some of the land idle in 1915?

A. Certainly.

Q. How much did you let lay?

2572 A. The whole "shooting match," except this 125 acres.

Q. And then the land you put in over on your own?

A. Yes, sir.

Q. That lay idle there in 1915?

A. Yes, sir.

Q. And grew up to weeds?

A. I didn't care what it grew up to because it wasn't mine. I couldn't work it. What should I do? I didn't have power enough to hire anyone to help me because I didn't have horses enough.

Q. Did you tell Mr. Butts to get somebody else to *the* the ground in?

A. No, sir.

Q. Didn't say anything to him about it?

A. No, I didn't have to because he always took my word for it and he was satisfied with the money I sent him, because I was that kind of a man that I don't keep the money in my pocket.

Q. He was satisfied with anything you saw fit to give him?

A. Yes, sir.

Redirect examination.

By Mr. Bronson:

Q. He trusted you to look after this?

A. Yes, sir. He was well satisfied.

Q. You say he told you there was something like 380 acres that he had there?

A. I think that is what he said, but the acres I couldn't

2573 tell, and know if it was 300 or 380 or 480, but it was something like that. I didn't pay much attention to it.

Q. The attorney for Minnesota asked about what you sold this land to Mr. Uns for and about whether the price that you got was the market price? I will ask you what Mr. Uns wanted for it after you sold it?

A. He was offered $55. He wanted $65.

2574 CHARLES L. BAKER, having been called at a witness of behalf of the complainant, was duly sworn, and testified as follows:

Direct examination.

By Mr. Pinkney:

Q. Where do you live?
A. At Sumner, Iowa.
Q. How old are you?
A. Forty-seven.
Q. What is your business?
A. Farmer.
Q. Did you ever live in Richland County, North Dakota?
A. Yes.
Q. When?
A. I lived there in the year 1914 and 1915?
Q. Whereabouts did you live?
A. Lived right down here on the state line.
Q. Did you own any land in the state of North Dakota?
A. Yes, sir.
Q. Do you now own any?
A. Yes, sir.
Q. Describe it?
A. East one-half of the east one-half of section 33, township 129? range 47. There is 158 acres. The ralroad cuts of- a little there.
Q. How long have you owned that piece of land?
A. I bought that in the spring of 1911.
2575 Q. Who did you buy it off?
A. Cox.
Q. Is that the piece of land shown on this county atlas here which appears in the name of W. H. Cox?
A. Yes, sir.
Q. Being just on the south line of North Dakota?
A. Yes, sir.
Q. How soon after you acquired it in the year 1911 did you move upon it?
A. I had a tenant there two years.
Q. You took possession of it when?
A. I took possession of it the 1st of March, 1911.
Q. And had a tenant on there for 1911 and 1912?
A. Yes, sir.
Q. Did you ever live on the land?
A. Yes, sir.
Q. When?
A. I was on there in 1914 and 1915.
Q. And you had the tenant there 1912 and 1913?
A. Yes, sir.
Q. And you farmed it yourself in 1914 and 1915?
A. Yes, sir.
Q. How much of this tract was susceptible of cultivation?

A. All of it.

Q. What was the character of the crops that were produced upon that land during the years 1912 and 1913 and 1914?

A. It was oats and corn.

Q. What kind of a crop of oats and corn did you raise
2576 there?

A. Good crops.

Q. What do you mean by good crops?

—. ——.

—. How much oats to the acre and how much corn to the acre?

A. Well, it has run from 35 to 50 bushel- of oats, 20 to 25 bushel- of corn.

Q. What was the quality of the corn?

A. Good.

Q. And the quality of the oats?

A. Good.

Q. Now in the year 1914 what kind of crops did you raise on this land?

A. I had a good crop of oats and corn both.

Q. Did you have any other kind of crop besides oats and corn in 1914?

A. Three acres of potatoes.

Q. Do you remember what the yield of the oats was per acre for the crop of 1914?

A. It was 35 bushel-.

Q. What was their quality?

A. Good.

Q. What was you- yield of corn per acre that year?

A. I had forty acres of corn, and that wasn't so good. That went about twenty bushel-.

Q. What was its quality?

A. Just fair.

Q. 35 bushel- of oats and 20 bushel- of corn?

A. Yes, sir.

Q. How much oats did you say you had there?

A. 45 acres in 1914.

2577 Q. How many acres of corn?

A. 45 of them.

Q. Now what did you have on the balance?

A. Hay and pasture.

Q. How much hay land?

A. Twenty acres of hay land and thirty-five acres of pasture, and then there is a little out for the buildings.

Q. Well, you had the whole farm under cultivation?

A. Yes, sir.

Q. Either crops, pasture or hay land?

A. Yes, sir.

Q. Now did you crop that piece of land in the year 1915?

A. Yes, sir, all I could.

Q. Well, you cropped the whole thing in 1915, didn't you?

A. Yes, sir, I put her all in.

Q. Now tell the Court what kind of crops you put in on that piece of land in 1915?
A. I had forty acres of oats, forty acres of corn and——
Q. What else?
A. Ten acres potatoes.
Q. That is ninety acres. What else did you have?
A. Pasture and hay land.
Q. How much hay land?
A. Twenty acres.
Q. How much pasture?
A. 35 acres.
Q. The balance was in the barnyard and building yard?
A. Yes.
2578 Q. Now did you harvest those crops in 1915 that you put in on this piece of land that year?
A. I harvested part of them.
Q. How many acres of the oats did you harvest?
A. About 20.
Q. How much of the corn?
A. About 20.
Q. How much of the potatoes?
A. Five acres.
Q. How much of the hay land was destroyed?
A. All destroyed.
Q. And all of the pasture?
A. Yes, sir, it was clear under water.
Q. Then you saved half of your oats crop, half of your corn crop and half of the potato crop?
A. Yes, sir.
Q. And your twenty acres of hay land and 35 acres of pasture were destroyed?
A. Yes, sir.
Q. By the flood waters?
A. Yes, sir.
Q. How many acres of your land was covered by these flood waters in the summer of 1915?
A. Well, it was all covered but forty-five acres. Well, I will say fifty acres. There was a little around the buildings.
Q. Then there was about 110 acres flooded?
A. Yes, sir.
Q. Now did you harvest and save this 20 acres of oats that you state you did?
A. Yes, sir.
2579 Q. What yield per bushel did you get?
A. 50 bushel, machine measure.
Q. Now was the 20 acres of that oats that was lost by these flood waters as good as the 20 acres you harvested and saved?
A. Yes, sir.
Q. Part of the same piece?
A. Yes, sir.
Q. And were they equally as good?

A. Yes, sir. If it had not been for the water they would have been better because the lower ground is a little richer than the upper.

Q. Is it true that they would have been equally as good?

A. Yes, sir.

Q. Now on the corn land—20 acres—how much did that yield per acre?

A. About 25 bushels.

Q. Now was the 25 acres of corn land that was lost as promising at the time of its destruction as this 20 acres that you saved?

A. Yes, sir.

Q. Is it your opinion that that 20 acres that was destroyed would have yielded as much as the 20 acres that was saved?

A. I rather think it, if the water hadn't taken it.

Q. Do you think it would have been better?

A. Yes, sir.

Q. Then it is your opinion it would have yielded just as much?

2580 A. Yes, sir.

Q. Now you saved five acres of potatoes?

A. Yes, sir.

Q. What was the yield per acre of those potatoes you saved?

A. 125 bushels to the acre.

Q. And were those that were lost as far as you know, as good as those that you saved, promise just as good a crop?

A. Yes, sir.

Q. And your hay and pasture land you say was entirely destroyed?

—. ——.

Q. Will you tell the court what the value of your oats, corn, potatoes, hay and pasture land, the crops standing on the land at the time they were destroyed?

A. Well, I figured the net loss would be $1,305.

Q. Now in reaching those figures have you deducted the cost of harvesting, threshing and marketing?

A. Yes, sir.

Q. And have you also deducted every other item of expense that would have been necessary to incur to put these crops on the market?

A. Yes, sir.

Q. That leaves you a net loss of $1,305?

A. Yes, sir. My potatoes I took with me. I got ninety cents for them. I figured here that they were sixty cents. I figured they would net me sixty cents.

Q. You figured the potatoes you lost were worth sixty cents a bushel, net?

A. Yes, sir, and I got ninety cents for them that I took with me.

2581 Q. And the net value of the loss to you on your crop for the year 1915 was $1,305?

A. Yes, sir.

Q. Was your fence destroyed?

A. Yes, sir.
Q. Or any of your buildings?
A. No, sir.
Q. Trees?
A. Yes, sir, I had 25 or 30 box-elders, a fine grove right east of the house in the yard there that I didn't figure in.
Q. How many trees?
A. 25 or 30.
Q. What was the age of them?
A. They must have been twelve or fifteen years old.
Q. About what was their dimensions on the ground?
A. Well, I wouldn't have taken $200 for the trees.
Q. What do you say the value of them was as they stood on the land there just before they were destroyed?
A. I would say $200.
Q. For the 25?
A. Yes, sir. They was a nice big grove. The shade was fine right there in the yard. Shade for the house and shade for the chickens and all such things as that that I had in the yard.
Q. Do you think that that would be a reasonable sum for the value of the trees?
A. I think is is very reasonable. I don't believe anyone would take that for the amount of trees in the place they were in.
2582 Q. That makes your total loss of crops, trees and so forth $1,505.60?
A. Well, the trees didn't die in 1915 they died in 1916.
Q. But they got their dose in 1915?
A. Yes, sir.
Q. How long did the water stay on in 1915?
A. It stayed on there until this year.
Q. Froze up in 1915?
A. Yes.
Q. On the land and on these trees?
A. Yes, sir.
Q. It was over these trees all of 1915?
A. Up, in the trees in 1915 and 1916.
Q. Now, Mr. Baker, did you farm these lands in 1916, or any part of them?
A. No, sir.
Q. Why?
A. I couldn't. It was too wet. They was flooded. They was all under water then.
Q. The entire farm?
A. Yes, sir.
Q. Clear up to your buildings?
A. Yes, sir.
Q. Was your house entirely surrounded by water?
A. Yes, sir.
Q. Did you leave there in 1916?
A. No, I moved out in the spring?

Q. What spring?

A. Spring of 1916.

2583 Q. Any waters on the land when you moved out?

A. I went out on the ice.

Q. The ice was frozen up around you?

A. Yes, sir.

Q. And the lands were entirely flooded in the year of 1916?

A. Yes, sir.

Q. Then you didn't produce crops of any kind?

A. Nothing at all.

Q. Now will you tell the court what the rental value of that land would have been to you if crops had been produced on it for the year 1916 of the kind that are usually produced on lands in that neighborhood?

A. I figured $600.

Q. Now what do you say as to its rental value for 1917?

A. Well, I want $800.

Q. Why do you make the distinction between 1916 and 1918?

A. Look at the difference in the price of grain and labor and everything else.

Q. So you think your share, the rental value to you for the year 1916 on this piece of land, would have been $600, and 1917, $800?

A. Yes, sir.

Q. Now in reaching the valuation have you deducted all expenses you would have been to to market your share of the crop?

A. Yes.

Q. And all expenses incident to the tenant's claims under the contract of one half?

2584 A. Yes, sir.

Q. You figured the pasture lands at what figure?

A. At $3 and the hay land.

Q. Didn't you compute the pasture lands at $2.50?

A. No, $3. I had a fine hay meadow and I would cut 35 to 40 ton- off of that 20 acres.

Q. Upland hay?

A. Midland hay.

Q. Was it fine hay for stock purposes?

A. Yes, sir, some very fine and some a little coarser.

Q. Can you tell us about what the market value of that hay is per acre?

A. $7 and $8 a ton.

Q. That is the same kind of hay grown on this land generally?

A. Yes, sir.

Q. What do you regard as the fair market value of this quarter section of land prior to the time these flood waters made their appearance?

A. $75.

Q. For the whole business?

A. Yes, sir.

Q. You mean $75 an acre?

A. Yes, sir.

Q. Now what do you regard the fair market value of this flooded land since the flood waters appeared there in 1915?

A. Well, I don't think there is any market for it at all.

Q That there is no market at any price?

2585 A No, sir.

Q Mr. Baker, were you on this land in the fall of 1914?

A. Yes, sir.

Q. Did you see any appearance of these flood waters in the fall of 1914?

A. Yes, sir.

Q. Were any part of your lands submerged in the fall of 1914 by these waters?

A. It didn't do me any particular damage. It was about two rods wide up through the pasture.

Q. And came on when?

A. In September—August or September.

Q. Wasn't it October?

A. No, sir, it reached there in September.

Q. And flooded about how much?

A. A strip about two rods wide.

Q. Altogether?

A. Well, in October it reached up into my pasture and up to the road.

Q. About how much of your land did it cover?

A. Covered four or five acres.

Q. Then the waters receded later?

A. Yes, sir. No they didn't go down they froze up right there.

Q. Didn't they recede so you cropped all this land the next spring?

A. No, it was only flooded in the pasture.

Q. The water didn't go off of your pasture land in 1915?

A. No.

2586 Q. But it did come on more?

A. Yes, sir.

Q. What year were the flood waters the deepest there on your land?

A. 1916.

Q. Have you any idea what depth the waters reached on your lands there in 1916?

A. Well, in the deepest I presume it was six feet.

Q. Where did the waters come from?

A. Came from the south.

Q. Which direction did they flow?

A. To the north.

Q. It resulted from the overflow of the Bois de Sioux river?

A. Yes, sir, the waters ran north.

Q. And spread out over that whole country?

A. Yes, sir.

Q. I understood you to say your lands were flooded in 1917 part of the year?

A. Yes.

Cross-examination.

By Mr. Palmer:

Q. When you bought this land in the spring of 1912 what did you pay for it?
A. $4,000.
Q. That is just $25 an acre?
A. Yes, sir.
Q. Was that the market value at that time?
A. I don't think so.
2587 Q. Did you make inquiry as to whether that was the fair market value or not?
A. No, sir, it looked awful cheap to me and I got it just as quick as I could jump onto it. He was wanting to make a sale. I called him over the 'phone and there was another fellow wanting to trade for the piece of land and wanted to know what I would give him. I says I will gove you $40 an acre and in the meantime I called up Mr. Cox and he said he would take $4,000 for it, and I came right up and took it, and got ahead of the other fellows.
Q. You thought you were getting a bargain?
A. Yes, sir.
Q. You didn't look at the government plat to ascertain whether that was designated as swamp land and marsh land, did you, Mr. Baker?
A. I knew he had been raising crops and had been farming the whole thing.
Q. How long did you know it?
A. I see- it before.
Q. Where did you live at that time?
A. I lived right west of White Rock, a half a mile.
Q. On some rented land?
A. Yes, sir at that time.
Q. How — did you live there?
A. Three years.
Q. Before you bought this land?
A. Yes, sir.
Q. Now I ask you again, did you look at the government plat to see whether that land was designated as a swamp or marsh land?
A. I never looked at the plat. All I looked at was the land.
2588 Q. And all you listened to was what somebody told you?
A. No, sir, I took my own judgment.
Q. Now let me call your attention to the government plat here. You say your land is the east half of the east half of section 33?
A. Yes, sir, 129-47.
Q. Now practically that entire quarter section is designated on this plat as swamp land isn't it?
A. Well, it looks that way, yes.
Q. Overflow land?
A. Yes, sir.
Q. Now where was the driest land on your farm?

A. The wettest land was right down here.
Q. The southeast corner?
A. Yes, sir, in the pasture.
Q. The south eighty was the wettest?
A. Well, the south forty. The 120 didn't *both*. That was all right.
Q. The south forty was wet?
A. Well, it was lower, yes.
Q. It is marked here on the plat as wet slough?
A. Yes, but it isn't though. The time that was taken I suppose it must have been that way in the early day, but not in my day. I was up here ten years and I found it all right.
Q. Now the north forty of that south eighty, is that wet some?
A. Yes, a little low. There is a little draw up here. I kept that for my hay land, and I had forty acres on this side.
2589 Q. Which side?
A. On the east side, and forty acres on the west side, that I changed around and put into oats one year and corn the next year, and this I used for my hay.
Q. What you point out there as hay land is the land on the easterly side of your quarter section?
A. It is in the center.
Q. Where was the pasture—down on the south forty?
A. Yes, sir.
Q. Now your crop land was?
A. On the east and west.
Q. Of the north eighty?
A. Of the north 120.
Q. Where did the buildings stand?
A. Just about on the northwest corner of the south forty.
Q. You have got your buildings down here on that wet forty?
A. She is standing right there, just the same.
Q. Wasn't the water up there in 1916?
A. Yes, sir, it got pretty close to the house. Came up in the door yard, so it killed my trees on the east side of the house.
Q. And your driest land is just as indicated on this plat, the north forty?
A. Well, right along there where this plat shows swamp is just as good as right over there. I had my forty acres of oats right there and the corn over here.
2590 Q. Is the east side of the north eighty just as dry as the west side of the north eighty?
A. Yes, sir.
Q. You think then there is a mistake in this government plat where it shows all but about thirty acres of this 160 as swamp or marsh land?
A. Yes, sir.
Q. That is a mistake?
A. I think it is wrong. I know it is wrong.
Q. That land was never overflowed prior to 1916?
A. Not to my knowledge. I was only up here ten years.

Q. What year did you come up here?
A. In 1905.
Q. Did you see this land in 1906?
A. I didn't pay much attention to it. I was then two miles west of the town of White Rock.
Q. Over in South Dakota?
A. I was in South Dakota, joined up against the line then.
Q. Then you had no reason to see this land in 1906?
A. No.
Q. In 1907 you didn't see it?
A. No, I didn't. That is I didn't pay any particular attention to it. I had no idea of ever getting it or anything of the kind.
Q. In 1908 you didn't see it?
A. I didn't pay any attention to it then.
Q. And 1910?
A. No, sir.
Q. Or 1911?
2591 A. Yes, I did.
Q. How did you come to look at it in 1911?
A. There was a fellow living up there on the place I was acquainted with him and went up there to visit him.
Q. That was a very dry year?
A. Yes, sir.
Q. And 1911 was the first time you saw this land to know it?
A. No, I seen it before that, but I never paid no particular attention to it. I have been past it and the like of that, but to look the land over as though I was going to get it or something of that kind——
Q. You never saw it until 1911 in that way?
A. Yes.
Q. Then you looked the land over?
A. Yes, sir.
Q. And of course it looked dry?
A. And was dry.
Q. And in 1912?
A. It was a dry year.
Q. And the land was dry?
A. Yes, sir.
Q. And 1913 was a dry year?
A. Yes, sir.
Q. And 1914 was a fairly wet year?
A. And the land was dry.
Q. And some of the land was wet?
A. The pasture was a little wet, but it was all right. There was good pasture.
Q. But it was wet?
2592 A. Well, it was dry like upland, but the water didn't bother any.
Q. 1915 was a wet year and the land was wet?
A. Yes.
Q. 1916 was a wet year?
A. Yes.

Q. And the land was wetter?
A. Yes, sir.
Q. 1917 was a dry year?
A. And the land was wet.
Q. Has the land been dry since spring?
A. Not to speak of, I guess. I haven't seen it for two years, and I wouldn't say that it is all right.
Q. You haven't seen the land at all since 1916?
A. No, sir, I moved away in March, 1916.
Q. You haven't been on that farm since?
A. No, sir, this is the first time I have been back.
Q. Since you have been up here this time then you haven't been to see it?
A. I just got here last night.
Q. Now, Mr. Baker, if you haven't seen that land at all since 1916 in March why do you come here and say that it has no market value at this time?
A. Well, I had letters from there. I had a man that went on there and we thought he was going to——
Q. Then all you know about it is what somebody has written you about it?
A. Why didn't I get something off it.
Q. Will you answer the question?
A. Isn't that enough.
2593 Q. Answer the question?
A. Yes, sir, because I didn't see it. I ain't going to lie about it.

Mr. Palmer: Haven't you received anything whatever for it for 1917?

A. Nothing but taxes, paying them, that is all.
Q. Nothing but the taxes?
A. I never received a nickel, it has been an expense to me all the time.
Q. Has any of it been plowed up this fall?
A. I think that the most of it is plowed now.
Q. It couldn't be plowed unless it was dry, could it?
A. I understand that the water has went down some so they can plow some of the other land and the fellow moved on there in September.
Q. This year?
A. He wrote to me and wanted to rent it and so I rented it to him.
Q. On what terms did you rent this to him?
A. I furnished the grain and give him half.
Q. That is you furnigh the seed?
A. I furnish the seed and give him half and I pay half of the threshing bill.
Q. That is the customary way of renting?
A. Yes, sir.
Q. And what do you get for the pasture and hay ground?
2594 A. I get $3 an acre.

Q. And that is the customary rental?
A. Yes, sir.
Q. You paid $25 an acre in the spring of 1912?
A. Yes, sir.
Q. And you think that from 1912 to 1914, two years that land went up in value three-fold to $75 an acre?
A. Well, a farm sold right by me——
Q. Answer that question; is that the way you want to leave that, that land was worth three times as much in 1914 as it was in 1912?
A. I wouldn't have taken any less.
Q. I am asking you about the fair market value; maybe you wouldn't have taken a thousand dollars?
A. Oh, yes.
Q. You think the fair market value was three times as much two years after you got it?
A. I do.
Q. Why?
A. Well, because the land around was raising and I considered I got that at a bargain; I considered that the land was worth more when I got in than what I give for it. That is the way I looked at that. I don't say that the other land around there—there was no other farm around there a man could buy for $25 an acre but the way he come to sell this I don't know but that was the price *but* he put on it and I took it mighty quick.
Q. You don't think there was any other land around there that could have been bought for $25 an acre when you bought this?
2595 A. No, sir.
Q. Did you make any inquiry to see?
A. Yes, sir.
Q. Did you inquire for the price on the land in section 34?
A. No, sir, there was no use.
Q. How do you know it wasn't any use if you didn't do it?
A. Well, the fellow on these—that is, I didn't think it was any use.
Q. Did you inquire for any of this L. D. Butts land in 28?
A. No, sir.
Q. Did you make any inquiry as to any other land there in section 33?
A. No, sir.
Q. Mr. Erickson had lived right next to your land there for a long time?
A. Yes, sir.
Q. A good reliable man; did you ask him whether this land had ever been overflowed?
A. No, sir.
Q. This water that came onto your land in 1915 and 1916, came up there through the outlet of Traverse Lake?
A. Yes, sir.
Q. From the south?
A. Yes, sir.

Q. You didn't mean to say that this land of yours was overflowed by water from the Bois de Sioux river, did you?

A. Sure.

2596 Q. Did you say that it was from the Bois de Sioux?

A. Bois de Sioux or Lake Traverse which comes up——

Q. The Bois de Sioux river is about a mile east of you?

A. Well, it runs into Lake Traverse and the Boise de Sioux run together, yes, sir, and this water come from the south right up there.

Q. Well, it came through that outlet of Lake Traverse which is west of White Rock?

A. Yes, sir, came up there in a dry time, too.

Q. In a dry time; what was the dry time it came up?

A. In the fall, 1914, and they cut hay right down there and had the hay stacks there. I helped to get off after the water went off.

Q. The fall of 1914 was a dry fall?

A. Yes, sir.

Q. The summer of 1914 was a dry summer?

A. Yes, sir.

Q. And 1914, was a dry year?

A. It was a fairly dry year, very nice season.

Q. Don't you know that in the month of June, 1914, Mr. Baker, you had the heaviest rainfall that was ever known in this history of the country?

A. I don't think we had it here.

Q. You don't think we had it?

A. No, sir.

Q. You didn't see it?

A. I can't recollect it that way.

Q. Do you recollect anything about it at all?

2597 A. I know I had a good crop that year and I know another thing, I cut hay all down south of me there, and there is where the waters raised right up and got around the hay stack after the hay was put up and without any rain in the fall at all and John Bruns told me about the water coming up across the road and we went down there and saw it.

Q. Where was that point?

A. That was south of my place, south of my line about 40 rods.

Q. Water was coming up from the south?

A. Yes, sir.

Q. Isn't there a ravine or waterway that runs across the southeast corner of your land?

A. Yes, sir, a little swale.

Q. Does water run in there pretty near every spring?

A. No, sir, it never bothered me there until is come up there in the fall of 1914 and 1915.

Q. As I understand you——

A. And I would have lost my crop, the entire crop of 1915, if I hadn't kept a dam across there and kept back as much as I could.

Q. You dammed the water up there, did you?

A. Yes, sir.

Q. And put it on the other fellow down below?
A. I was holding it off the south as much as I could.
Q. In 1915, your damages are figured on a basis of what you would have raised if you had got all your crop. How much did you figure those potatoes an acre?
2598 A. Well, I figured those netting me 60 cents a bushel and 125 bushels to the acre.
Q. That would be about $75 an acre?
A. Yes, sir.
Q. At what time of the year did this water come up on the potatoes?
A. It come up there in June.
Q. What shape were the potatoes in, were they ready to dig?
A. Not in June.
Q. They were not?
A. No, sir.
Q. What shape were they in?
A. They were just in nice growing shape.
Q. There weren't any potatoes on them at all naturally?
A. No, I don't suppose there were any more than little marbles.
Q. Mr. Baker, if you were going to buy potatoes in the field in June, would you pay $75 an acre for them?

Mr. Pinkney: We object to that as incompetent and immaterial, not proper cross-examination.

A. I wouldn't think so.
Mr. Palmer: How?
A. No, I wouldn't nor would you either, but if you get your potatoe crop, if you have some besides them and in the fall they were worth that, why wouldn't the others be worth that if they wasn't damaged? I don't think a person has to take it in the spring that way.
Q. How much did you figure that that corn was worth per acre in the field in June if you were going to buy it on the market?
A. It simply wasn't worth anything in June, because it was
2599 just nothing but little stuff there. All you had to figure on what was coming up there, there wasn't any corn there.
Q. If you were going to buy that corn in the field in June on the market you would not give anything for it, Mr. Baker, is that what you mean to say?
A. No, I don't mean to say that.
Q. You tell me?
A. But then you know very well, you might have 40 acres of corn here and she would look very nice and be six inches high and what would you do? You would have that corn up there six inches high or a foot high in June and you don't know what the coming crop is going to be.
Q. The oats in June as they stood there in the field, what were they worth per acre on the market?
A. Well, oats were worth fifty cents a bushel.

Q. I didn't ask you what they were worth a bushel; I asked you what they were worth per acre standing in the field in June?

A. How the Dickens am I going to know that?

Q. If you don't know, you don't know, do you?

A. No, nor do you. The idea is right here, you can't tell when that crop is coming up what it is going to be worth but you can tell from what I got there what it was worth. They went fifty bushels to the acre, what I got off and so, why wasn't the others just the same?

Q. You say that you rented some land west of White Rock in the year 1913?

A. Yes, sir.

Q. What did you pay an acre for that land?

A. I rented it same as I rented mine at that time.

2600 Q. How was that?

A. On the halves.

Q. And what did you pay for corn land?

A. Well, Mr. Erickson and I had it in together and stock and everything and we fed the corn and what we didn't need for feed we sold.

Q. Then you didn't rent the corn land at cash rent?

A. No, I didn't rent the corn land at cash rent.

Q. Did you rent the corn land on your own farm for cash rent in 1913?

A. No, that year it was all in oats.

Q. Then in 1913 your farm was rented on halves?

A. Yes, sir.

Q. And what did you get as net returns that year from the crop about how much?

Mr. Pinkney: We object to that as incompetent and immaterial.

A. I think it was seven hundred, if I remember.

Mr. Palmer: You think you got $700?

A. Yes, sir.

Q. That was a very good year, wasn't it?

A. That was an ordinary year.

Q. What did you get in 1912, net returns?

A. I think that year I got between five and six hundred as near as I can remember, I wouldn't say for sure, I didn't keep no tab on that.

Q. That was a very good year, wasn't it?

A. Well, yes, as near as I can remember now, it was a very good; but you know some people don't farm land as good as others it makes a whole lot of difference in the fellow that is on there.

2601 Q. 1912 was an exceptionally good crop year?

A. And I had a good crop where I farmed it. I got a little better crop down there in Iowa than the ordinary fellows. If I had been on my own farm I would have got more than the renter.

Q. 1912 was a good crop year and you got $550, thereabouts?
A. About that.
Q. 1916 was a very poor wet year?
A. And I got nothing.
Q. But you ask here and figured your damage $600 for that year?
A. Yes, sir, you remember the grain was higher too.
Q. 1917 was not so good a year as 1912, was it?
A. It was better down our way.
Q. In this section?
A. In this section of the country it was not, I guess, quite so good, but it was worth more money what you did get.
Q. You figure you ought to have $800 for 1917?
A. Yes, sir. How much more is wheat worth a bushel than it was a year ago.
Q. What did you get for your corn ground on your own farm in 1913?
A. He gave me half.
Q. Of the corn?
A. Yes, sir.
Q. 1913, and 1912, what did you get for hay and pasture land?
A. I got $3 an acre.
2602 Q. You are to get for 1918, this coming year, just the same rent that you got before the flood?
A. Yes, sir.
Q. In 1916, in March, when you moved away from this land, where did you move?
A. I went to Sumner, Iowa.
Q. Did you move your family there?
A. Yes, sir.
Q. Have you lived there ever since?
A. Yes, sir.
Q. And you and your family are living there now?
A. Yes, sir.
Q. This damage that you have stated, Mr. Baker, you have given here with the expectation that you will recover it, have you not?
A. Yes, sir.
Q. Have you contributed towards the expense of instituting and carrying on this suit against the State of Minnesota by the State of North Dakota?
A. Yes, sir.
Q. And has that been with the understanding and expectation that if damages are recovered by the state of North Dakota that you will get your damages from the State of North Dakota?
A. From the State of North Dakota? I am supposed to get my damages out of the——
Q. Suit?
A. Yes, sir.
Q. And that is why you contributed this money?
A. Sure.
Q. Do you know how long Mr. Cox had this land?

2603 A. No, sir.

Q. The records would appear to show that he bought it in 1908; did you ask him about that?

A. No, I didn't ask him.

Q. Do you know what Mr. Cox paid for the land?

A. No, sir, I do not.

Q. Never asked him anything about that?

A. No, sir; well, that the abstract I suppose but I don't just recollect.

Q. The consideration in his deed shows $2,700, about $17 an acre, Mr. Baker, don't it?

A. It — all right with me whatever he paid.

Q. Was this a pretty fair set of buildings that was on there when you bought the land?

A. Yes, I put $700 addition to the house I have an eight room house now, and two cellars under it. There was a cellar under the old part and I put a cellar under the new part.

Q. Is that all the improvements you put on, was $700 worth?

A. No, I put on a machine shed and pig house, 16 x 90, there with straw roof over it and then I put on a carriage shed and tool shed, that was put up in nice shape.

Q. Cox never lived on the land himself?

A. No, sir.

Q. He had it in the hands of tenants?

A. Yes, sir, I fenced the 35 acres and that is all hog-tight fence.

Q. Do you know how long it had been since anyone had lived on it when you bought it?

A. No, sir, I don't.

2604 Redirect examination.

By Mr. Pinkney:

Q. What was the total cost of these improvements you put on this piece of land after you bought it?

A. $700 in the house and the other building there cost me $84, I think.

Q. Which cost you $84?

A. The carriage shop and tool shop I had together.

Q. What did the hog shed cost?

A. There was an old barn that I bought at White Rock for $50. I used that for the sides and I put poles over it and hay over it, so the lumber in there—she was worth more in a way.

Q. What else was there?

A. That is all; the fences I don't recollect just what they cost. There is a 36 inch woven wire around the——

Q. What did it cost, about what did it cost?

A. $150.

Q. How much is the total, about $984, isn't it?

A. Something like that, I figured I put $1,000 on there and it was pretty close.

Q. Mr. Baker, I understand you to say that you knew this piece

of land in a general way for ten years before you bought it, is that correct?

A. I say that I have known the land here because——

Q. I am simply asking you about this piece of land. Am I correct that you testified you knew the land in a general way for ten years before you bought, is that true?

A. Yes, sir.

Q. When you bought it you relied on your eyes for what
2605 the character of the land was, not what this government plat showed, didn't you?

A. Yes, sir, I went altogether—I never see the plat of it at all.

Q. You have been a farmer a good many years and you know a piece of land when you see it?

A. Yes, sir.

Q. You can tell a lake from tillable land, can't you?

A. Yes, sir.

Q. You can tell a marsh from tillable land, can't you?

A. Yes, sir.

Q. Is there any marsh on this land?

A. No, sir.

Q. You started to tell Mr. Palmer about a piece of land selling in your neighborhood; about when was that piece of land sold?

A. That was in 1914.

Q. What kind of land was it as compared with your land?

A. I didn't consider it near as good as mine.

Q. What was it, a quarter section?

A. Yes, sir.

Q. What was the character of the improvements on it as compared with those on your land?

A. It wasn't near as good, just a very small house and it was pretty well retted down.

Q. How much of a piece of land was it?

A. 160 acres.

Q. Who owned it?

2606 A. Cleark's brother, land agent Clark.

Q. And it was sold in 1914?

A. Yes, sir.

Q. What time in the year 1914?

A. Or the fall of 1913; it was sold in the fall of 1913 and he moved on there in the spring of 1914.

Q. What did that sell for do you know?

A. That sold for $55 an acre.

Q. And you say you don't regard it as good as your piece of land and the improvements are not near as good, is that true?

A. Yes, sir.

Q. How far is it from your land?

A. A quarter of a mile.

Q. In which direction?

A. West and southwest.

Recross-examination.

By Mr. Palmer:

Q. That is the southwest quarter of section 33 that L. Clark land you are talking about?
A. Yes, sir.
Q. We will find out whether it sold for $55.
A. I never see that, that is what he told me.

Mr. Pinkney:

Q. Who told you?
A. John Bruns, the fellow that bought it.
Q. Does he live on it now?
A. Yes, sir.
Q. What is his post office?
2607 A. White Rock.

Mr. Palmer:

Q. Mr. Bruns' land was not flooded in 1915, was it?
A. Yes, sir, it was flooded on the south or the east.
Q. Did he lost his crops in 1915, same as you did?
A. No, sir.
Q. Did he lose his crops in 1916, the same as you did?
A. I wasn't here then.
Q. You don't know anything about that?
A. No, sir.
Q. His land lies up more than 3 feet higher than your land, don't it?
A. I never had it surveyed, I wouldn't know.
Q. You don't know anything about that?
A. No, I would judge that my land was higher than his, that is, the high part of my land.
Q. That is the way you look at it?
A. That is the way I look at it yes, sir. He is off further that way, that is the way it looks to me.
Q. He is further away from the river?
A. Yes, sir.

2608 MARY E. CLAREY, sworn in behalf of the complainant, testified as follows.

Examined by Mr. Bronson:

Q. You are the owner of an estate in the southwest quarter and the northwest quarter of section 16, and the southeast quarter of section 17, township 129, range 47, Fairmount township, North Dakota?
A. Yes, sir.
Q. Consisting of about 473½ acres?

A. Counting the railroad off.

Q. You may state whether or not you have resided or lived on these premises since the spring of 1910?

A. Yes, sir.

Q. Did you come up from Illinois with your husband in 1910 and move on these premises?

A. Yes, sir.

Q. You may state whether or not your husband died on or about March 19, 1912?

A. Yes, sir.

Q. While a resident on these premises?

A. Yes, sir.

Q. You are the mother of nine children?

A. Yes, sir.

Q. Your boys since the death of your husband, have worked this land with you?

A. Yes, sir.

Q. Do I understand that this land was by your husband left to you for your life?

A. Yes, sir.

2609 Q. And then to the children?

A. Yes, sir; I have the right to sell if I want to, of course it goes to the children afterwards.

Q. You think you have the power of sale besides this estate for life?

A. Yes, sir.

Q. You may state whether or not your husband bought the premises in the fall of 1909?

A. Yes, sir, in the fall.

Q. From 1910 up to 1915 you may state whether or not you have raised on these lands, crops of wheat, oats, barley corn and other similar crops?

A. Yes, sir, I always raised good crops, but one year the rust affected it, the wheat.

Q. You may state whether or not these lands were ever flooded during the time you have been there from 1910 up, to 1915.

A. No, sir, not that I have ever seen.

Q. You have lived there on the premises?

A. Yes, sir.

Q. And during every year up to 1915 these premises were farmed?

A. Yes, sir.

Q. Now you may state whether or not in the year 1915 approximately the following acreage was into the crops hereinafter stated; 120 acres of wheat, 68 acres of oats, 40 acres of flax, 80 acres corn, 30 acres hay land, 80 acres pasture, 20 acres clover and timothy, 7 acres alfalfa, 7 acres potatoes balance of acreage in house yard, barnyard and road right of way?

2610 A. Yes, sir.

Q. You may state whether or not these various crops of cereals, including corn and potatoes were put in in seasonable condition in the year 1915?

A. Yes, sir.
Q. And at seasonable time?
A. Yes, sir.
Q. You may state also whether or not these crops so sown and planted in the year 1915 were in a promising condition prior to any flood waters upon the same?
A. Yes, sir, very.
Q. You may state whether or not in the year 1915 these premises, with the crops standing upon them as you have described them, were flooded by water?
A. Yes, sir.
Q. And about when did the water reach its highest stage or at least the high stage?
A. About the 20th or somewhere along there of July.
Q. 1915?
A. Yes, sir.
Q. And as the result of it, state whether or not the crops that you have mentioned so growing on said premises, including hay and alfalfa, were destroyed that year?
A. Yes, sir, only a little bit of hay, didn't amount to anything.
Q. You got some hay?
A. Just a little.
Q. And whether or not you harvested any crop?
A. Just a little; it was so badly damaged, it didn't amount
2611 to anything, very poor, just a few acres.
Q. What you did get, had it been covered with water?
A. You could hardly get in to get it.
Q. Water had been on it?
A. Yes, sir, and soaking so you couldn't get in hardly.
Q. Do I understand, Mrs. Clarey, that all of your premises in 1915 excepting where the house stands was substantially covered with water?
A. Not all covered, there was a little corner what wasn't covered, all soaking wet.
Q. And how deep was the water on your premises in any one place?
A. I couldn't say, from a foot to two feet, probably more.
Q. And how close did the water come up to your home?
A. Well, say about 20 yards, something like that, from the door as near as I can tell.
Q. I will ask you to state whether or not you made a computation of the value of these crops so destroyed in the year 1915 by these flood waters as such value existed at the time of their destruction?
A. Yes, sir.
Q. I will ask you to state whether or not this is the computation that you have stated to be the value of such crops, namely; 120 acres of wheat, average yield 20 bushels per acre, market price 95 cents gross $2,280; 60 acres of oats, average yield 50 bushels per
2612 acre, market price 45 cents, gross, $1,530; 40 acres of flax average yield 10 bushels per acre, market price $1.70, gross $680; 30 acres of wild hay, value $3 per acre, $90; 80 acres of pas-

ture value per acre $2.50, gross $200; 20 acres of timothy and clover, value $6 per acre, gross 120; 7 acres of alfalfa, value $10 per acre gross $70; 7 acres of potatoes, average yield 60 bushels per acre, market price 60 cents, gross $252; 80 acres of corn, value $10 per acre, $800; gross total $6,022. Deductions for harvesting, threshing, digging potatoes and marketing, total $771, net damage in value $5,251. Is that the estimate?

A. I thought it was wrong.

Q. That is with the corn land figured in that you had omitted?

A. Yes, sir.

Q. That is the estimate, isn't it, with the corn land figured in?

A. Yes, sir, it is if I put it down there.

Q. You are familiar with the rental method that has been spoken of by different witnesses here in this examination?

A. Yes, sir, I listened to them.

Q. What is known as the cropper's contract plan?

A. Yes, sir.

Q. You may state whether or not you have computed the rental value of these premises as they would have been in the year 1915 without these flood conditions?

A. Yes, sir.

Q. You may state whether or not in such computation under this rental plan that they mentioned and which you say you understand you figured the rental value of such land for the year 1915 the sum of $2,163.40 net, to you?

2613 A. Yes, sir.

Q. You may state whether or not in making the computation for the crops in 1915 so destroyed, you took the average yield of the different crops mentioned?

A. Yes, sir.

Q. In the vicinity for that year?

A. Yes, sir.

Q. And the market price?

A. Yes, sir.

Q. As you understood it to be?

A. Yes, sir.

Q. And your crops on your land, as I understand, promised at least an average yield?

A. They were extra good.

Q. Better than an average yield?

A. Yes, sir, they were.

Q. For that season?

A. For that season, yes, sir.

Q. I will ask you to state whether or not these lands in 1916 were overflowed?

A. Yes, sir.

Q. To the same extent or greater than they were in the year 1915?

A. Same, I don't know as it was any worse.

Q. Were you able to use or farm these lands in 1916?

A. No, sir.

Q. Why?

A. Because there was so much water on, remained on them same as it had been.

Q. And that condition continued substantially throughout the farming season?

2614 A. Yes, sir.

Q. So these lands could not be used by you for any farming purpose?

A. Yes, sir.

Q. I will ask you to state whether or not you have made a computation of the damage sustained by you in the year 1916 by reason of being unable to farm these lands to any purpose on account of the flood conditions that existed in that year 1916?

A. Yes, sir.

Q. Will you state it?

Mr. Palmer: Objected to as not the proper measure of damages.

A. 100 acres of corn at 25 bushels per acre, 75 cents a bushel, $2,575; 100 acres of stalks, $1 per acre, $100; hay land, 30 acres wild hay at $3 per acre, $90; pasture 80 acres at $3 per acre, $240; timothy and clover, 20 acres at $6 per acre, $120; Alfalfa, 7 acres at $10 per acre, $70; potatoes, 5 acres, 35 bushels per acre, 175 bushels, at $1 per bushel, $175; damage to fences, wire, posts, and labor, $100. Gross loss for crop of 1916, $3,470. Expenditures of raising crop, $525.50; net loss, $2,944.50.

Mr. Bronson:

Q. I will ask you to state also whether or not you have computed the rental value of the use of these premises for the year 1916?

A. Yes, sir.

Q. If they had not been flooded and subjected to these flood conditions you mentioned?

A. Yes, sir.

Q. I will ask you to state your computation in that regard:

2615 100 acres of corn land at $3 per acre on the rental basis, $300; hay land, 30 acres at $3 an acre, $90; pasture 80 acres, at $3 an acre, $240; timothy and clover, 20 acres at $3 per acre, $60; alfalfa, at 3 per acre, $21; potatoes, 5 acres at $3 per acre, $15. Total, $726. In other words for the year 1916 the rental value of the premises involved you figured on a cash basis of $3 per acre?

A. Yes, sir.

Q. You may state to what extent you have used the premises, or was the same capable of use in 1917?

A. In 1917 I put in most of the quarter on the west side of the road there, south.

Q. Into what?

A. All but 5 acres into flax and some barley, some oats and a few potatoes.

Q. What season of the year was it put in?

A. It was put in June 15 or 16, somewhere, couldn't get in any sooner on account of the ground being wet.

Q. It was plowed this spring?

A. Yes, sir, couldn't do any plowing in the fall.
Q. And what you did put in was put in on spring plowing?
A. Yes, sir.
Q. You may state whether or not you made a computation of the loss that you have suffered for the year 1917?
A. Yes, sir.
Q. By reason of these flood conditions which would not have existed except for them?
A. Yes, sir.

Q. 5 acres of flax, 5 bushels per acre at $2.97 per bushel
2616 $74.25; 117 acres of wheat, 8 bushels per acre 936 bushels, at $2.05 a bushel, $1,918.80; 60 acres of oats, 20 bushels per acre, 1,200 bushels, at 55 cents, $660; 50 acres of barley, 10 bushels per acre, 500 bushels, at $1, $500; 45 acres of pasture at $2, $90; gross loss, $3,243.05. Expenditures 1917, $1,570.40. Net loss $1,672.65?
A. Yes, sir.
Q. You may state what would be the net rental value of those premises not used or capable of being used in the year 1917, figured on a cropper's contract plan?
A. $1,118.20.
Q. After these flood conditions occurred, Mrs. Clarey, did you have any growths on this land in weeds, or cat-tails?
A. Yes, sir, nearly all covered with cat-tails in 1916 and 1917.

(Complainant's Exhibits 33 and 34 marked.)

Q. I show you Complainant's Exhibit 33 and ask you to state whether or not that is a photograph of a portion of your land?
A. Yes, sir.
Q. As taken on the west half of section 16 and whether or not it shows some cat-tail growths there?
A. Yes, sir.

The Commissioner: At what time was that taken?
A. October.

Mr. Bronson:

Q. Were you there when it was taken?
A. I wasn't out but the boys went out.
Q. This was taken in October sometime, 1917?
A. Yes, sir. Yes, sir, about the 8th of October.

Q. This photograph also shows some of the plowing on the
2617 edge of the photograph; does that purport to be plowing there?
A. Plowing at the time it was taken.
Q. And these growths are the cattails?
A. Yes, it took three men to get that into condition one to rake and one to cut and one to burn it and try to plow it before they plowed it, that is on the half section in 16.
Q. You say after these growths had occurred on these lands the difficulties you encountered in getting this plowed, is what?

A. Had to cut it and rake it and burn it before we could plow it on that half section, and on the other we plowed some of it under on the home quarter, 17, we plowed some under for flax; we didn't mow all, we only plowed a little, we couldn't plow then, we mowed it and raked it.

Q. I show you Complainant's Exhibit 34 and ask you whether or not that is a photograph of this Blackmer elevator and the cat-tails in front of it?

A. Yes, sir.

Q. How far is that from your home?

A. I should judge it would be a quarter of a mile, just a short distance.

Q. That is the place where you used to market your grain?

A. Yes, sir, always.

Mr. Bronson: We offer Complainant's Exhibits 33 and 34 in evidence as part of the examination.

Q. What happened to your alfalfa?

A. It was drowned out on the north and the roots were so wet it was killed.

Q. Roots were killed?

2618 A. Yes, sir.

Q. What happened to the pasture and hay land?

A. All under water, wouldn't do anything until this year.

Q. Roots killed?

A. Pasture was partly killed out.

Q. You mentioned something about the difficulties of plowing these lands that have grown up to cat-tails after the flood conditions had existed during the years 1915 and 1916. Now, I will ask you to state what is the reasonable cost of restoring these lands so affected in 1915 and 1916 to their former condition as to arability and tillability?

A. $5 per acre, as to the work we put on it.

Q. What was the character of this soil?

A. It was good, excellent.

Q. Black loam?

A. Yes, sir.

Q. Do you know what the value of your land was per acre before these flood conditions?

A. About $80.

Q. That is per acre, you mean?

A. Yes, sir.

Q. And what is the market value of these lands under the existance of these floods?

A. There wouldn't be any value to them so far unless after this we get some good conditions again.

Q. That is, you mean to say, that lands that were flooded as these were in 1915 and 1916, don't have any market value?

A. No, sir.

2619 Cross-examination.

By Mr. Palmer:

Q. Have you placed any of these lands on the market?
A. No, sir.
Q. Have you made any attempt to sell any part of them?
A. No, sir.
Q. I suppose you intend to keep this land and live upon it and cultivate it the best you can, Mrs. Clarey?
A. Yes, sir.
Q. When did you buy the west half of section 16 if you bought it at different times, tell me about the north quarter?
A. I bought the quarter in 17 and the quarter on the—the southwest quarter, that was about—and the northwest quarter about the same time, just a few weeks afterwards.
Q. All of this land was purchased in 1910?
A. 1910, yes, sir, well we bought it in 1909 and didn't settle until 1910, in March.
Q. Where did you come from here?
A. Illinois.
Q. When I say you I mean yourself and your husband, Mrs. Clarey?
A. Yes, sir.
Q. Had you ever seen any part of this land until 1910?
A. My husband was out to see it.
Q. In 1909?
A. 1909, yes, sir.
2620 Q. Had he ever seen any part of it before that?
A. Not before 1909.
Q. What was paid for the southeast quarter of section 17?
A. $50 an acre.
Q. In 1909; did that have the same house on it that it has now?
A. No, sir.
Q. Did it have good buildings and improvements upon it?
A. We put lots of improvements on it. We had a barn and a house, that was about all, and hen house.
Q. This Blackmer station and elevator is just a very short distance from your house?
A. Yes, sir.
Q. About how many rods?
A. About 60 rods, I think.
Q. And was the station and elevator there when you bought the land?
A. Yes, sir.
Q. Was the land cultivated and improved?
A. Yes, sir, that is the most of it.
Q. I mean the quarter now in 17?
A. Yes.
Q. Who was living on there?
A. Before we lived on there?

Q. Yes.
A. Mr. Robinson.
Q. Do you know when Mr. Robinson got it?
A. He lived on it five years.
2621 Q. He got it 5 years before?
A. He didn't own it, he was renting.
Q. Do you know whom he rented from?
A. Tuttle Land Company.
Q. That was a land company here in Fairmount?
A. Yes, sir.
Q. Do you know how long the Tuttle Land Company had owned it?
A. No, I don't.
Q. Did you buy it from the Tuttle Land Company?
A. Yes, sir.
Q. Did you make any inquiries as to how much the land company had paid for it?
A. No, sir, I made no inquiry.
Q. Did you make any inquiry as to how long anyone had lived on the land?
A. I couldn't say for sure.
Q. In other words, did you make any inquiry to learn how long it had been a tenant farm?
S. No, sir.
Q. Was it in good condition as to cultivation when you got it?
A. Well, yes, but some had quite a little bit of wild oats on it.
Q. 1910 was the first year that you farmed it?
A. Yes, sir.
Q. It was a very dry year?
A. I don't remember that.
Q. Do you remember as to 1911 being a dry year?
A. No, I can't say I do.
2622 Q. 1912?
A. Well, plenty of rain for the crops. I couldn't say whether it was too much or not enough.
Q. 1912 was a very good crop year, do you recall that?
A. Yes, sir, very good.
Q. 1913, do you recall whether it was a wet or dry year?
A. I couldn't tell you, we had a good crop.
Q. And 1914?
A. Yes, sir, the grain was affected a little by the rust, either 1913 or 1914. Wheat went 17 bushels on the land in the section the year of the rust, whether it was 1913 or 1914.
Q. Did you observe any water on the land in the fall of 1914?
A. No, sir, I don't think there was.
Q. No trouble at all that fall?
A. No, sir, not a bit.
Q. Was there any water at all in the spring of 1915?
A. No.
Q. No trouble at all about getting your crops off?
A. No, sir.

Q. Any difficulty about doing your plowing in the fall of 1914?
A. No, sir.
Q. Did you say that you bought the half section 16 about the same time you bought the land in 17?
A. Yes, sir, all the same time.
Q. What did you pay for it?
2623 A. You mean the southwest quarter?
Q. Yes.
A. $50.
Q. Same as you did for the land in 17?
A. Yes, sir.
Q. What was paid for the northwest quarter of 16?
A. $40.
Q. Was that school land?
A. Yes, sir, so was the other.
Q. All of the west half of 16 was school land?
A. Yes, sir.
Q. Did you buy that from the land company, too?
A. Yes, sir.
Q. You don't know when that was purchased from the state?
A. No, sir.
Q. Was this same tenant farming that west half of 16?
A. Northwest you mean the southwest?
Q. Southwest?
A. Yes, sir.
Q. Was he farming also the northwest of 16?
A. No, sir, I don't think so.
Q. Who was farming that when you bought it?
A. I think Mr. McConn.
Q. What condition of cultivation was it in?
A. It was in good condition, had good crops.
Q. Was the southwest quarter also in good condition of cultivation?
A. Yes, sir, that is what was broken up. It wasn't all broken up at the time we got it.
2624 Q. There were never any buildings on the west half of 16 or any part of it?
A. No, sir, not that I know of.
Q. Were there any fences on there when you got it?
A. No, sir.
Q. How many acres do you think were broken on the southwest of 16?
A. About 60 acres. In the year 1909 there was some more, I don't know how much, broken that fall, summer fallowed in the land, I don't know just how much. I couldn't say whether it was new land or not.
Q. On the northwest quarter of 16, how much was broken?
A. I couldn't really say.
Q. Did you make any new breakings on the northwest of 16?
A. Yes, sir, 1915 we broke up 40 acres for flax and then before

that we broke up several time- small tracts of land, 10 or 15 acres at a time.

Q. You say there was not a great deal of the west half of 16 that was broken when you got it?

A. You mean the southwest quarter of 16, don't you?

Q. All the west half?

A. Well, it was probably, I couldn't say, quite a bit broken up. I couldn't tell you how many acres, I didn't pay any attention to it them days.

Q. Did you make any inquiry at the time you bought the land as to whether the water came up onto it from the south and west?

A. No, sir.

Q. Mrs. Clarey, there is a bridge right west of your house?

2625 A. Yes, sir.

Q. About how far west of the house?

A. Well, I don't think it is half a mile; there is two bridges there.

Q. The first one is about 80 rods isn't it, westerly of your house?

A. Yes, sir.

Q. And then about 40 rods west of there is another bridge?

A. I don't know how far.

Q. Well the first bridge is 32 feet wide?

A. I don't know anything about that.

Q. It is a pretty good sized bridge?

A. Yes, sir, one is, the new one.

Q. And the one further west, is that smaller?

A. The one further west is the largest, isn't it?

Q. Those bridges across ravines that come up through there, do they?

A. Yes, sir, one of them.

Q. Is there a ravine where each of the bridges is?

A. I don't think so.

Q. What does the——

A. I don't know, I can't remember what they was for.

Q. When the water came up in the summer of 1915, it came up from the south and west?

A. South mostly.

Q. Through these ravines?

A. No, I don't think very much through the ravines.

Q. Where did it come from?

A. From the south, and some was in that coulie, mostly run all over everywhere.

2626 Q. Who lives right directly south of your home?

A. Mr. Gouge.

Q. He lived there in 1915 and 1916?

A. Mr. Farwell lived there in 1915; Mr. Martin lived there in 1916.

Q. Did they own the land or did they rent it?

A. They bought it, I think.

Q. The water didn't come across their places, did it, by their houses?

A. Yes, sir; not by the houses but on the side.
Q. Is came across westerly of their house?
A. No, not only down on the south end a little bit, some on the east side.
Q. By the railroad track?
A. On the east side of their farm.
Q. Did it come up along the railroad track from Bleckmer onto your place?
A. It came from the south, southwest of there, I mean of the track.
Q. Towards your north line on the southeast quarter of 17, there is a railroad bridge, is there not?
A. Yes, sir.
Q. Do you know anything about what size that is?
A. No, sir.
Q. Does it cross this ravine also?
A. Yes, sir.
Q. And then across the east line of the northwest quarter of 16 there appears to be a bridge?
A. Yes, sir.
Q. 20 foot span; does that cross that same ravine?
2627 A. Yes, sir.
Q. That is a ravine *the* comes up from the southwest and forms the westerly outlet of Traverse Lake, according to your understanding?
A. I can't tell any thing about that.
Q. Where does the water go to from that ravine?
A. It goes through my land on the north quarter on down towards the river, I suppose.
Q. Down towards the Bois de Sioux river?
A. I think so.
Q. Bearing off to the northeast. Have you done any ditching along that ravine?
A. No, sir.
Q. Into what part of your farm did the water come first in 1915?
A. I think it came about the same time, came if I remember right on the east and came in on the coulie, too.
Q. That coulie on the west?
A. It was overflowed some too.
Q. Which crops were first overflowed?
A. Well, the ones of the half section.
Q. Up on the northwest quarter of 16?
A. Yes, sir.
Q. Those were first overflowed?
A. Yes, sir.
Q. Were these the crops that grew near this coulie?
A. Yes, they were put in all along, of course, most all over.
Q. Mrs. Clarey, you have spoken of the value of your crops in 1915?
2628 A. Yes, sir.

Q. At what time in 1915 did the water destroy these crops?
A. In July.
Q. Do you know of any wheat having been sold in the field in July 1915?
A. No, sir.
Q. Or any oats?
A. I couldn't say.
Q. Or flax?
A. In July?
Q. Yes.
A. I couldn't say.
Q. Do you know of any corn in the field having been sold in July 1915?
A. No, sir, it would be fodder, it wouldn't be any other kind.
Q. Where did you get the estimate which you have expressed here of $10 an acre as the value of corn in July, 1915?
A. Well, we had that much corn in but it got drowned out.
Q. I say, where did you get your estimate of $10 an acre?
A. That was the average around the country, that was a very small crop too.
Q. Do you know of any having been bought and sold in July, any corn in the field?
A. No, sir; on my farm you mean?
Q. On any land around there? If you were going to buy corn in the field in July 1915, would you pay $10 an acre for it?
2629 A. I don't know.
Q. Mr. Pinkney: Objected to as incompetent and immaterial, not proper cross-examination.

Mr. Palmer:

Q. You don't know anything about the market value of corn in the field in July 1915?
A. I never said July, did I?
Q. When this was destroyed, do you know anything of the market value of the corn in the field at that time and place?
A. Well, it was worth that much anyhow.
Q. Why do you estimate that on the probable yield?
A. Yes, sir, what other people have.
Q. You know of none having been bought and sold in the field at that time?
A. No, sir, I don't.
Q. Do you know of any potatoes having been bought or sold in the field in July 1915?

Mr. Pinkney: We object to that for the same reason. It is not proper cross-examination. It is incompetent and immaterial, it is not the proper rule of damages in any sense of the word.

A. No. I know we had a nice patch of potatoes, looked fine, that were drowned out in 1915. They would have made a big yield if we got them.

Mr. Palmer:

Q. You estimate the value——

A. Very low, I think.

Q. —Market value upon the crop that you might have had, had they matured?

A. If it had not been drowned; they were matured most of them.

2630 Q. Do you know the ordinary cash rental value of land such as yours in your locality in 1915, per acre?

A. What do you mean?

Q. Suppose you were going to rent your land in 1916, for cash rent

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A. I would rent it for grain, I never knew of any that rented for cash rent.

Q. I take it then that you don't know anything about it?

A. I said I never knew it to be rented for cash rent except it be pasture and hay land.

Q. Then what did it rent for?

A. $3 an acre most everybody rents it for.

Q. For hay lands?

A. Yes, sir, and pasture.

Q. And pasture?

A. Yes, sir, except clover and alfalfa, something like that.

Q. As to corn land, do you know any of them having been rented for cash rent in that locality in the season 1916?

A. I rented some myself that year.

Q. What did you pay per acre for it?

A. I don't — exactly just know how many acres I did have, some I had to rent, I had nothing on mine.

Q. Did you pay cash rent?

A. Yes, sir.

Q. How many acres did you rent?

A. I just couldn't say how much I had on there; the boys attended to that; it wasn't very much.

Q. Did you pay around $3 or $4 an acre?

2631 A. I didn't pay no $4 an acre. I never paid no $4 an acre for it. I don't know just exactly what it was, not over $3.

Q. I apprehend that if you were going to put land into wheat or oats in 1917, you might have rented it for cash of about $3 an acre?

A. No, sir, I never knew any to rent for that.

Q. Or if you wanted to rent the land to put into corn in 1917, could you have rented it for $3 an acre?

A. I think so.

Q. How much do you think would be asked per acre for land to put into wheat or oats, would they ask any more than they do for corn?

A. I never knew any to rent that way.

Q. Didn't you ever know anybody to rent land and put wheat on it or oats on it?

A. Not only on a share.

Q. You never knew of any having been rented for cash and put into wheat and oats?

A. No- around there.

Q. In making your estimate of damages for 1917, you have figured on a certain yield of wheat per acre?

A. No, wheat in 1917.

Q. Didn't you figure on wheat?

A. No, sir, nor oats nor barley.

Q. Where did you get your figures of $1,672?

A. I had corn—in 1917?

Q. Yes, in 1917?

A. Yes, sir, I beg your pardon, I was mistaken, in 1917 there was 117 acres of wheat at 8 bushels per acre.

Q. You estimated——

2632 A. That was the estimate of the neighbors in the community.

Q. As to what might have been produced had the land been cropped?

A. Yes, sir.

Q. And the several estimates of damage that you have given here, Mrs. Clarey, I suppose you have given them with the expectation of recovering them?

A. Yes, sir.

Q. And you contributed also to this fund for the purpose of instituting and carrying on this suit by the state of North Dakota?

A. Yes, sir.

Q. And have you done so with the expectation and understanding that if North Dakota recovers from the State of Minnesota you will receive your damages?

A. Yes, sir.

Redirect examination.

By Mr. Pinkney:

Q. You sustained the damages you have testified to, didn't you Mrs. Clarey?

A. Yes, sir.

Q. Now, you computed the yield of wheat per acre for the year 1917, on the 117 acres at what your neighbors produced on lands where they raised wheat?

A. Yes, sir.

Q. In the year 1917?

2633 A. Yes, sir.

Q. That is where you got you- 8 bushels per acre?

A. Yes, sir.

Q. That was on lands of your neighbors of a similar kind and character to your wheat lands that year, wasn't it?

A. Yes, sir.

Q. Did you have any oats for the year 1917, in your computation?

A. Yes, sir, 60 acres at 20 bushels.

Q. Where did you get your yield per acre on your oats, how did you arrive at it?
A. On what the neighbors got.
Q. On similar lands in your neighborhood?
A. Yes, sir, within a short distance.
Q. And they were, generally speaking, the same kinds of lands you had?
A. Yes, sir.

2634 JOSEPH W. GAJER, recalled in behalf of complainant, testified as follows.

Examined by Mr. Pinkney:

Q. You are the same Mr. Gajer, who testified in this case yesterday, are you?
A. Yes, sir.
Q. Do you wish to make any correction as — your statement of the number of acres of overflowed land in your testimony that you gave yesterday?
A. Yes, sir.
Q. Do you remember what number of acres you gave yesterday as being overflowed?
A. I think it was 522.
Q. Do you wish to make any corrections with respect to your statement in that regard?
A. Yes.
Q. You may state what the number of acres were you had overflowed?
A. The number of acres we had yesterday, it was too high.
Q. What was the actual acreage?
A. Actual acreage was, for 1915—we had more overflowed for 1916, than we had in 1915, that is where the mix up comes in.
Q. How much did you have overflowed in 1916?
A. In 1916 we had 5——
Q. Didn't you tell me last night you had a mistake in stating the number of acres, instead of having 522 acres overflowed it was only 422 acres? Was that correct or not?
2635 A. Yes, sir, that is correct.
Q. Then, that is the maximum number of acres you had overflowed?
A. Yes, sir.
Q. That is the correction you wish to make in your statement?
A. Yes, sir.

Cross-examination.

By Mr. Palmer:

Q. That is some 100 acres; you want to reduce your damages accordingly I suppose, Mr. Gajer?

A. We got a mix up with that 1912, we had more overflowed than in 1915.

Q. But you want to make a correction in the amount of your damages proportionate to that then in acreage, I take it?

A. Yes, sir.

Redirect examination.

By Mr. Pinkney:

Q. What do you mean by that? Didn't you testify as to the exact number of acres you lost the crops on yesterday?

A. Yes, sir.

Q. You lost that number of acres of crops, didn't you?

A. We had 100 acres too much.

2636 Q. That was 100 acres too much over and above your crop land?

A. Yes, sir.

Q. Then you did have the number of acres of crop loss you testified yesterday?

A. Yes, sir, the number of acres I lost.

Recross-examination.

By Mr. Palmer:

Q. You got that 132 acres of oats on breaking, you still have a loss on that, and that 100 acres of flax that you had on breaking where you broke up the pasture land and the roads and everything else, have you got that yet, Mr. Gajer, or do you want to take that out of your testimony?

A. I didn't——

Q. I know you didn't do it, Judge Pinkney did it?

Mr. Pinkney: Then you better let me answer the question, Mr. Palmer.

The Witness: In 1915, that is where we got a mix up? In 1915, I didn't have as big a number of acres as I had in 1916. 1916 the water was higher on my land. We had over 500 acres overflowed in 1916 that was not overflowed in 1915. That is where that came from.

Mr. Pinkney:

Q. How many acres did you have overflowed in 1915?

A. In 1915 we had 457 acres, I guess, in 1915. In 1916, it was 520 acres, something like that.

Q. 522?

A. Or 522. (Referring to paper:) 457 acres overflowed 2637 in 1915, 525 acres under water in 1916.

Q. That is right, is it?

A. That is right.

(At this time recess it taken until 10 o'clock a. m. November 12, 1917.)

2638 On November 12, 1917, at Fairmount, North Dakota at 10 o'clock A. M. all parties were present and the taking of testimony was adjourned until 1:15 P. M.

November 12, 1917, 1:15 p. m.

FREDERICK A. BURTON, sworn in behalf of complainant, testified as follows.

Examined by Mr. Pinkney:

Q. What is your name?
A. Frederick A. Burton.
Q. State your age and place of residence?
A. My age is 66.
Q. Where do you live?
A. Wahpeton, N. D.
Q. Do you hold any official position in the county of Richland, North Dakota?
A. Yes, sir, I do.
Q. What position do you hold?
A. County Auditor.
Q. How long have you held that office?
A. Since the spring of 1901.
Q. How long have you lived in Richland County, North Dakota?
A. I came to Richland County in the fall of 1895.
Q. As County Auditor do you have the care and custody of the assessor's books from the different townships of the county?
A. Yes, sir, I do.
Q. As County Auditor do you have anything to do with the expending of the taxes on the land as returned by the respective township assessors?
2639 A. I do, we extend them.
Q. In your office?
A. Yes, sir.
Q. And what valuations do you extend them on?
A. On the valuations as equalized by the state on real estate.
Q. Have you with you the assessor's book for certain lands in Fairmount Township being the lands in controversy in this case of the State of North Dakota versus the State of Minnesota, located in Fairmount township, Richland County, North Dakota?
A. I have for the years 1915 and 1916.
Q. Did you make a copy of said records, of the records of such lands together with their valuations for the years 1915 and 1916 on which taxes were extended by you for those respective years?
A. I made a copy of parts of the records.
Q. And a copy of the valuations?
A. And part of the valuations and part of the——
Q. Together with the descriptions of the lands?
A. Yes, sir.
Q. Have you such copies with you?
A. Yes, sir.

Q. Will you produce such copy that you say you prepared.

(Witness produces paper which is marked Complainant's Exhibit 35).

You may look at the instrument now shown, you marked Complainant's Exhibit 35, and state if this is the copy that you made and prepared?

A. It is.

Q. Where did you get the valuations from in 1915 and 1916 as shown on this exhibit?

A. From the assessment books for the years 1915 and
2640 1916 of Fairmount township.

Q. Have you compared this copy with the valuation as given in these assessors' books for those years?

A. I have.

Q. Is this a true and correct copy of such valuation?

A. It is.

Q. As shown by such records?

A. Yes, sir.

Q. And are those valuations the valuations on which the taxes were extended by you on the lands therein described for the years 1915 and 1916?

A. They are.

Q. And were the taxes for the years 1915 and 1916 extended on those valuations for state, county and township purposes?

A. They were.

Q. Are you able to give the rate levied for state purposes for the year 1915 on which you extended taxes on these valuations in Complainant's Exhibit 35?

A. For 1915 they were 4.3 mills.

Q. That is 43 cents on 100 dollars' valuation?

A. Yes, sir.

—. Can you give the rate extended for state purposes for the year 1916?

A. 4 mills.

Q. That would be 40 cents on 100 dollars' valuation?

A. Yes, sir.

Q. Have you those assessors' books with you from which those valuations are shown on the exhibit?

A. Yes, sir, they are on the table.

2641 Mr. Pinkney: We offer Comp-ainant's Exhibit 35 in connection with the testimony of this witness and also tender you the assessors' books from which the valuations there shown are taken for your verification.

Mr. Palmer: That is objected to as incompetent, irrelevant and immaterial, not the best evidence, no foundation laid for its introduction.

Mr. Pinkney: You do not object to the use of the copy in place of the original books themselves, do you?

Mr. Palmer: We will make *no* objection to the use of the copy as showing what it purports to show and that only, and upon the

further condition that the witness furnishes a statement of the assessed valuations of the same lands for the year- 1914 and 1917.

The Commissioner: Are the assessments ready for 1917?

Mr. Pinkney: No, sir, they are not. The valuations have not been extended yet, if they had been, we would have had them.

Mr. Palmer: We make the general objection that the evidence as offered is incompetent, irrelevant, and immaterial, no foundation laid for its introduction and not the best evidence.

The Commissioner: Exhibit will be received.

Mr. Pinkney:

Q. Mr. Burton, you may tell the court whether the taxes for the year 1917 on these lands described in Complainant's Exhibit 35 or any other lands in Richland County, have been extended for the year 1917, as yet?

A. I don't remember as a whole, I think in a few townships they have been extended but have not been extended in Fairmount Township, Richland County, that is, not completely.

Mr. Bronson:

Q. When did the County of Richland receive the state board of equalization's action with regard to equalization proceedings
2642 on these lands involved in Richland County or any lands in Richland County?

A. I cannot state the exact date from memory.

Q. About when?

A. Oh, according to my recollection, it was some time in September.

Q. Some time after the state board of equalization had met?

A. Yes, sir, sometime after the state board of equalization had met.

The Commissioner:

Q. Has a report of the state board of equalization for 1917 been filed in your office as yet fixing the final valuations for this township?

A. Yes, sir.

Q. So that it will be possible for your to pick out from the report of the state board of equalization the valuations as finally fixed, wouldn't it?

A. I think so at the present time.

Mr. Bronson:

Q. For 1917?

A. Yes, sir, for 1917.

The Commissioner: Then it would be possible to get that?

A. Of course, we couldn't extend taxes on the valuations of lands until we fix the final valuations of the township of Fairmount. We couldn't fix the valuation of the township of Fairmount until

we got all of the assessments from the state on corporation taxes as well as any changes on lands because we couldn't establish the rates.

Q. Upon the request of counsel for the defendant you will please make those schedules, will you, for 1914 and 1917?

A. For 1914 and 1917.

2643 Mr. Pinkney: We do not concede the materiality or relevancy or that, your honor.

The Witness: On those same lands?

The Commissioner: On the same lands, Fairmount township.

Mr. Pinkney: Your honor, we offer this exhibit 35 in evidence, as a part of the record in connection with the testimony of this witness.

The Commissioner: As a part of his evidence.

The Witness: Those copies for 1914 and 1917 you would like certified to, I suppose?

The Commissioner: I presume that would be wise, then they will prove themselves.

Mr. Palmer: As we understand it, the witness will furnish schedules of these valuations for 1914 and 1917 and that the schedules will be admitted as part of his present testimony in like manner as exhibit 35.

Mr. Pinkney: No, we do not agree to admit it as part of his present testimony at all. We will agree that you may offer it in evidence.

The Commissioner: Then may it be considered that it may be offered as part of the cross-examination of the witness without his returning?

Mr. Pinkney: Yes, we will agree to that.

The Commissioner: As offered by Mr. Palmer as part of the cross-examination.

Mr. Pinkney: Yes, we will agree to that excepting the right to object to its materiality and relevancy.

Mr. Bronson:

Q. You have testified concerning the state levy for the year 1915. Now I will ask you to state the rates of the 1915 tax
2644 levies for Richland County, North Dakota, including state and county levies and other levies made.

A. All I can do would be to refer to this receipt.

Q. I want to read those into the records for our more specific information.

A. The state general fund was 3.875 mills, terminal elevator fund .125 mills, state bond interest fund .1 mills, state bond sinking fund .2 mills, county general fund 5.9 mills, county bridge 3.45 mills, county road .8 mills, county fair .2 mills, county general school 1.65 mills. Total levy for state and county 16.3 mills.

Q. I will have you state likewise for the year 1916.

A. For 1916 state general fund 3.875 mills, terminal elevator fund .125 mills, county general fund 5.73 mills, county bridge fund 3.67 mills, county general school fund 1.84 mills, county

road fund .74 mills, county fair fund .22 mills. Total state and county levies 16.2 mills.

(Complainant's Exhibits 36 and 37 marked.)

Q. I show you Complainant's Exhibit 36 entitled North Dakota Lands, Assessments for the years 1914 and 1915, and ask you to state whether or not as county auditor this blueprint marked such exhibit, was received by you in your official capacity as county auditor from the state auditor for the State of North Dakota?

A. Yes, I received it from the state auditor of the State of North Dakota.

Q. I will ask you to state whether or not this exhibit 36 shows the county board assessment for the year 1914 and the state board assessment for the year 1914 as equalized as well as the acreage for assessment purposes in the year 1914?

A. It does.

2645 Q. I will ask you to state also whether or not this exhibit 36, shows for the year 1915 the county board assessment as equalized by the county board and the acreage subject to assessment for the year 1915?

A. It does.

Q. I will ask you to state also whether this exhibit 36 shows likewise such acreage and such county board assessment for each of the counties in the state respectively and the state board assessment for each of the counties in the state?

A. It does.

Q. You may state whether or not such assessments as you have testified concerning such exhibit were the basis of the taxes levied and assessed for the years 1914 and 1915, the exhibit however not showing the state board equalization for the year 1915?

A. Yes, were the basis.

Q. I show you exhibit 37, purporting to be issued by the state auditor of the state of North Dakota and purporting to show the amounts of the valuations per acre of lands as levied by the state board of equalization for the years 1915 and 1916 and 1917 and ask you to state whether or not with reference to Richland County the said valuations of such state board of equalization for the County of Richland for the years 1915, 1916 and 1917 are as indicated on such exhibit 37 for Richland County?

A. You mean the average valuation per acre?

Q. Yes.

A. Yes, these average valuations per acre are correct.

Q. I will ask you to state also whether this exhibit 37 shows the equalizations made by the state board of equalization of the

2646 lands concerning the years it purports to cover situated in all of the counties of the State of North Dakota as so equalized by the state board of equalization.

A. It shows the average valuations of land in each county for each of said years.

Q. In other words, for the purpose of illustration, exhibit 37 purports to show the average valuation assessed by the state board of

equalization or rather as equalized by the state board of equalization for the year 1915 in Richland County as $8.91 per acre?

A. It does.

Q. And for the year 1916 as $8.01 and for the year 1917 as $8.01?

A. It does.

Q. Now it appears that in the year 1914, from Complainant's Exhibit 36, such average valuations for the County of Richland was $6.60, is that correct?

A. Yes, sir, $6.60 per acre.

Q. In other words, do I understand that in the year 1914 the basis for the levy of taxes for that year in the county of Richland was $6.60, the average basis?

A. That would be the average basis, yes.

Q. As left by the State Board of Epualization?

A. Yes, sir.

Q. In 1915 it appears from exhibit 36 that such average valuation for the year 1915 in Richland County as left by the County Board of Equalization was $6.60 and that the state board of equalization in that year raised that valuation to $8.91 for Richland County?

A. That is correct.

Q. And that is the fact, isn't it?

2647 A. It is a fact.

Q. Will you explain, simply for the purposes of the record, how changes were made in your assessment records after the county board of equalization in the year 1915 had equalized the average rate of taxation per acre at $6.60 and thereafter the state board of equalization had raised it to $8.91?

A. Under the state certificate of per centum Richland County was raised 35 per cent on lands. Consequently each piece of land in the county, the valuation of each piece of land in the county, as left by the county board was raised 35 per cent.

Q. And by this method of computing 35 per cent additional to each individual assessment for the year 1915, the taxes were levied and assessed for that year in that manner?

A. Yes, sir.

Q. On such increased valuation?

A. Yes, they were.

Q. Now it further appears that in the year 1916, from these exhibits, this average valuation for the county of Richland was changed from the figure $8.91 for the year 1915 to the figure $8.01 for the year 1916. Now explain how the individual assessment was made after reception of such change by the state board *fo* equalization in the year 1916.

A. The state cerificate of per centum on lands in Richland County decreased the valuation of the lands 10 per cent. Consequently, each particular piece of land, the valuation of each particular piece of land in Richland County, was decreased 10 per cent of the valuation made by the county board.

Q. In the year 1917 it appears from these exhibits that the state board of equalization's actions with reference to this equalization

leaves the average figure for Richland county same as 1916; therefore, in making the individual assessments for the
2648 year 1917 on the lands in Richland County, is there any percentage of increase or decrease?

A. No, it was left the same as it was equalized by the county board. The state left it the same as it was equalized by the county board, no change, and by the county board equalized up to the figure that it was left in 1916.

Q. Now, in understanding these exhibits 36 and 37, am I to understand that the assessed valuations for the various counties in the state for the respective years as shown by these exhibits formed for each county in the state the respective average valuations for each of such counties?

A. They are supposed to; of course, I can't certify to the state auditor's figures on lands outside of Richland County.

Q. In other words, for the purpose of understanding these exhibits, when in the year 1915 the assessed average valuation per acre for the county of Richland was $8.91 as fixed by the state board of equalization it would be how much for the county of Cavalier in the State of North Kakota?

A. That is for, 1915?

Q. Yes, sir.

A. In 1915, as per this record, it was an average of $6.71 per acre.

Q. In other words, in getting at the method of equalization proceedings in making as assessment on lands in the entire state, the state board of equalization as you understand it equalizes the average rate per acre for each county in the state?

A. They equalize up to an average standard, they are supposed to.

Q. Then is it correct for an understanding of these exhibits
2649 to state that they show the comparative rate of assessment of the lands situated in the various counties of this state as equalized for each county by the state board of equalization?

A. They are supposed to show the comparative average valuations of the lands in each county.

Q. For assessment purposes?

A. For assessment purposes.

Mr. Pinkney:

Q. Let me ask you this question. Do you know in a general way these lands that were flooded in the years 1915 and 1916 and 1917 in Fairmount township?

A. I have a pretty general knowledge of them.

Q. Are you able to tell the court how these lands were assessed for taxation purposes prior to the year 1916 as compared with other farm lands in the county of Richland, North Dakota, that were not flooded?

A. It is a question to answer on account of there being such a variety of valuations throughout the county.

Mr. Bronson:

Q. But for purposes of comparison, are you on account of holding an official position as county auditor for some 15 years familiar with the comparative valuations for assessment purposes of Fairmount township with other townships in the county of Richland?

A. Yes, sir, I am.

Q. I will ask you to state what are comparatively the valuations for Fairmount township lands in Fairmount township as compared with lands in other townships in the county of Richland.

Mr. Palmer: That is objected to as irrelevant, not the best evidence, no foundation laid, witness not shown himself competent to testify.

A. Well, they are among the lands, in the county that have the highest assessment.

Mr. Bronson: Now speaking of the township of Fair-
2650 mount itself——

A. They are not the highest assessed lands in the county, but they are among the highest.

Q. Speaking of the township of Fairmount itself with relation to the lands that were flooded in the years 1915 and 1916 and part of 1917 and the lands that were not flooded—and when I speak of flooded you understand me to refer to those lands that were shown you as being flooded on Complainant's Exhibit 1, and mentioned more particularly in Complainant's Exhibit 35, the statement you prepared—and ask you to state what you know concerning the comparative valuations for assessment purposes of such flooded lands and such lands not flooded in a general way.

Mr. Palmer: If your honor please, I would like to ask the witness a question for the purpose of laying a foundation for an objection.

The Commissioner: Very well.

Mr. Palmer:

Q. Mr. Burton did you see these lands that are alleged to have been flooded in 1915 at the time the waters are alleged to have been upon them?

A. In 1915?

Q. Yes.

A. I did.

Q. Did you see them in 1916?

A. I did.

Q. Did you know of your personal knowledge the specific description of lands which had water upon them or which are alleged to have had water upon them in 1915 and 1916 in this township and in the township of Fairmount?

A. Well, that is a question that is pretty hard to answer. I have

travelled over the lake that was down there, hunted ducks,
2651 but to be able to state when you are in a pond of water what the actual description of that land happened to be would be pretty hard work for me to state; but I know one particular piece of land that I think is on that list where I travelled over that I could specify and that is some land that is owned by Mr. Broderick.

Q. You know then of but one specific description?

A. That is the only one I could specify distinctly from memory because in passing through the water there I never took pains to find out where I happened to be just at that particular time.

Mr. Pinkney:

Q. Section lines were kind of obliterated?

A. They were very much obliterated.

Mr. Palmer: We object to the witness answering this question for the reason that he has not shown himself competent to testify, that it is not the best evidence, that there is no foundation laid for the question and that it is irrelevant to any of the issues in this case.

Mr. Bronson: Read the question.

(Question is read by reporter and the following is added by counsel:)

—as they were before such flood conditions?

Mr. Palmer: I will ask the witness if he ever saw Complainant's Exhibit 1, to his knowledge?

Mr. Bronson:

Q. Here it is now, have you ever seen it before?

A. I don't remember that I ever did.

Q. (Complainant's exhibit 1 is shown to the witness). Are you familiar in a general way with these lands that were flooded in 1915 and 1916, colored yellow on that exhibit 1?

2652 A. I am.

Q. And you are familiar generally with the lands you have described in exhibit 35, in a general way?

A. Yes, sir.

Q. You are familiar with where the Bois de Sioux river is?

A. Yes, sir.

Q. And you are familiar with the lands in North Dakota that are adjacent to the Bois de Sioux River?

A. Yes, sir.

Q. From the state line up towards Wahpeton?

A. Yes, sir, I am.

Q You have traversed that territory more or less?

A. Yes, sir.

Q. Saw it in 1915 and 1916 in the flood conditions?

A. I did.

Q. You saw it before 1915 and 1916, did you not?

A. I did.

Q. During the years you have resided here from 1895 to the present time you have been more or less familiar with the lands in Fairmount township by actual observation of them?

A. No, not since 1895.

Q. Since when then?

A. Oh, since 1909.

Q. Then for a period of practically 8 years you have been more familiar with them?

A. Yes, sir.

Q. You know Mr. Pinkney?

A. I do.

Q. Know where his lands are?

2653 A. In a general way, yes, sir.

Q. Do you know where he lives?

A. Yes, sir.

Q. Know Mr. Schouweiler?

A. Yes, sir, I know Mr. Schouweiler.

Q. Mr. Wallace Taylor?

A. Yes, sir.

Q. Know where he lives and his land?

A. I couldn't say just where he lives, no, because by passing through I never got all their houses.

Q. You know the Broderick land?

A Yes, sir.

Q. You know Gajer's?

A. No, I don't locate it by that particular name.

Q. In a general way you are familiar with the lands you have described in this exhibit 35 which lie more or less adjacent to this Bois de Sioux river in Fairmount township?

Mr. Palmer: That is objected to as entirely too indefinite and immaterial.

A. Yes, sir.

Mr. Bronson:

Q. And in a general way you know how *there* lands have been assessed for the years up to the time these flood conditions occurred as compared with other lands in Fairmount township?

Mr. Palmer: That is objected — as leading and not the best evidence.

A. I do.

Mr. Bronson:

Q. In other words, supplementing the original question, how did these lands so flooded in 1915 and 1916 compare in assessed valuations to other lands in Fairmount township prior to the time of the existance of these flood conditions?

2654 Mr. Palmer: That is objected to as incompetent, irrelevant and immaterial, not the best evidence, witness not shown himself competent to testify, no foundation laid.

A. Many of the flooded lands are up as high as the majority of other lands, pretty well up to the high point of valuations of lands in the township.

Mr. Bronson: We offer in evidence Exhibits 36 and 37 as part of teh examination of the witness.

Mr. Palmer: Objected to as incompetent, irrelevant and immaterial, not the best evidence, no foundation laid.

Mr. Bronson: You do not object to the exhibits as not certified by the state auditor?

Mr. Palmer: No.

Mr. Bronson: It will not be necessary to call the state auditor to testify to those exhibits as part of the proceedings of the state board of equalization in making the equalization on the land.

Mr. Palmer: We waive the authentication by the state auditor personally.

Cross-examination.

By Mr. Palmer:

Q. You state you are able to call to mind the land of Mr. Broderick which was flooded in 1915 and 1916. Will you kindly describe that land?

A. His is part of section 16 in 129, 47; the location of it, I think, is the southeast quarter and some pieces. Of course, I am gathering this particular description from the location in passing over
2655 his land there in — location of his shack and so forth, according to my recollection.

Q. How did the valuation of that land in 1914 for assessment purposes compare with the valuation of other farm lands in Richland county?

A. That particular piece of land was not assessed up to the highest value for the reason that it is all not under cultivation, not assessed as some of the other pieces.

Q. How much of it was under cultivation in 1914?

A. There was none of it under cultivation——

Mr. Pinkney:

Q. Do you know?

A. —that I know of.

Mr. Palmer:

Q. Have any improvements on it in 1914?

A. He had a small house——

Q. That is before any of these flood waters came upon it?

A. Well, in 1915 he had a house and barn on it. In 1914 I don't just exactly remember.

Q. Valuation for assessment purposes 1914 appears to be $660, Mr. Burton?

A. I know it was not assessed up with other lands because it was as I say uncultivated land.

Q. Was it low land too, wet land?

A. Well part of it may be rather low.

Q. That would account for its not being improved, I take it?

A. But in 1915 it was all under water.

Q. In 1914 it had no improvements upon it and no cultivated land?

A. I don't know whether there was any improvements on it in 1914, whether he had any buildings on it or not, but any way the buildings would be assessed separately. Any way it doesn't
2656 show—the valuations given there are particularly for the assessment of the land, not the improvements.

Mr. Pinkney:

Q. That is exclusive of improvements?

A. Yes, sir.

Q. Does your statement here, exhibit 35, show the valuation of the land exclusive of any improvements?

A. Yes, sir, it shows the land exclusive of improvements.

Mr. Palmer: Was there any substantial reduction in the land, in the assessment of this Broderick land, in 1914, from the assessment value of 1914 to the valuation of 1916?

A. There was quite a reduction in the assessment in 1916 from what it was in 1915. The 1914 assessment I can't remember.

Q. Do you know anything about the reason for a reduction in the valuation between 1915 and 1916?

A. Well, apparently the reason was, apparently for the reason of these flooded conditions.

Q. I understand you to say it was flooded in 1915 and also in 1916, both years. Am I correct in that?

A. I think you are but as I understand the floods came somewhere in the month of August. I have good reason to believe it was a fact although I was not down there in the spring, for the reason that in the lands just adjoining Mr. Broderick's land I was—in the fall I was on that land hunting and the heads of wheat were sticking up out of the water, water was probably about two feet deep on it. That is a piece just west of Mr. Broderick's land.

Q. Your understanding is that there were no flood waters upon it until August 1915?

A. That is my understanding. There couldn't very well have been on account of the grain being headed out and so forth
2657 but I wasn't on there prior to the fall of that particular year.

Q. The valuation for 1914 appears to be $660 and that for 1916 $597, a difference of only $63?

A. 19——

Q. 1914 and 1916, a difference of only $63.

The Commissioner: On what date is the assessment made each year?

A. The assessment is supposed to be made on the valuation of the land on the 1st day of April. Of course, the assessment is not made until thereafter. The assessments are supposed to be made and completed before the 1st day of June.

Q. But as of the 1st of April?

A. But as of the 1st day of April, that is supposed to be the valuation.

Mr. Palmer:

Q. How is the first valuation which is made the basis for subsequent equalizations fixed?

A. The valuation is fixed by the township assessor.

Q. The township assessor does his work between what dates?

A. Well, between the first day of April and the first day of June, or at least is supposed to.

Q. And the township assessor is a resident and voter of the township and a taxpayer?

A. Yes, sir, he is.

Q. He views the land or acts upon his personal knowledge of it?

A. He is supposed to.

Q. And fixes its value for assessment purposes as of the first day of April each year?

A. Yes, sir.

2658 Q. Under the law the duty of the assessor is to place the valuation at its true and actual value, is it not?

Mr. Pinkney: We object to that, the law is the best evidence and the witness can not testify as to the same. For the purpose of objection we want to ask the witness a question or two.

Q. You are not a lawyer are you?

A. I am not.

Q. Do you know anything about what the law is concerning assessments and what rulings the attorney general has made on them, do you? You are not the assessor, are you?

A. I am not the assessor.

Q. Nothing to do with the assessments, have you?

A. Well, I have something to do with the assessments because I furnish the assessment book and review the assessment to some extent.

Q. Have you anything to do with the actual viewing of the land and of the assessment made by the assessor?

A. I have not.

The Commissioner: Read the last question.

(Mr. Palmer's last question is read by reporter.)

A. As I understand the law of the state that all property should be assessed at its true and full value.

Mr. Palmer:

Q. As a matter of practice I wish to ask you if that is done, that is observed?

A. It is not.

Q. The township assessor——

A. That is, it is not as far as placing the figures is concerned. It may be considered in the estimate of the land but not in placing figures upon the assessment book.

2659 Q. At what percentage of the actual value has it been the custom in fixing these valuations for assessment purposes by the various township assessors in the years that are here inquired about?

Mr. Pinkney: That is objected to that it does not appear that there is any custom or method or general observance or if there is that this witness knows anything about it.

A. Well, it is the general understanding, about 25 per cent of the actual value.

Mr. Palmer:

Q. Is that a mere custom or practice that has been adopted unauthorized by law?

A. It is unauthorized by the law I think for the past two or three years it has been recommended by the tax commission as a basis.

Q. A decrease in valuations would only result in an increase of the rate?

A. Well, as far as the state is concerned, the increase or decrease of valuation would not affect the rate.

Q. An increase in the valuation to its true and full value——

A. As far as the state is concerned it would increase the amount of taxes but it would not increase the rate as far as the state——

Q. Do I understand you then—go ahead, as far as what?

A. As far as the state, on the state levies it is so many mills regardless of the valuation. I presume the state levies in dollars and then they fix their mills on the valuation of the whole state. So perhaph indirectly it might, if all the counties in the state were to reduce valuation, it might increase the rate.

Q. You don't mean to say that an increase of property to its full and true value as required by the statute would give the state

2660 approximately four times the present amount that it receives from taxation of real estate?

A. Well I presume that if it is put to the full value the state would reduce the amount of their levy, consequently their rates would go down.

Mr. Bronson:

Q. You mean by legislation?

A. Yes, sir.

Mr. Palmer: That is a matter for the legislature?

A. Yes, sir, for the legislature.

Q. If the state general fund is fixed by the legislature at so much?

A. Yes, sir.

Q. And a levy made of a sufficient rate upon the assessed valuation to realize that amount that is correct isn't it?

A. Yes, sir, but I am getting at, if at the present time Fairmount township was dropped out of the state valuation entirely I don't think there would be any change in the state rate of taxes; it would be just the same because it would not be enough to affect the state rate. If it occurred all over the state then there would be a change, the rate would go up when property for the valuation of the entire state should go down. Of course, the state levy couldn't go up above where it is now because the law provides they can not raise over 4 mills for general purposes.

Q. I notice that in the budget of taxes here you have county general fund in 1915, 5.9 mills. How is that fixed?

A. On the county general fund?

Q. Yes.

A. There is so many dollars levied by the board of county
2661 commissioners for county general purposes.

Q. Tell me the rest of it.

A. You want me to go on about the rate?

Q. Yes.

A. And then the auditor takes the valuation of the county and figures the rate that would produce that amount.

Q. What valuation of the county does he use in figuring that rate?

A. The valuation of the county as left by the state with the addition of corporation taxes levied by the state.

Q. So that the rate is fixed at sufficient to realize that amount of money for that fund regardless of individual valuation?

A. It is.

Q. And that is true of these other several funds, such as county bridge and county road funds, isn't it?

A. Yes, sir, general school and county fair.

Q. All fixed in the same manner?

A. Yes, sir, all fixed in the same manner.

Q. Now, likewise the legislature makes a budget of so much for state general fund, terminal elevator, bond interest fund and bond sinking fund; the legislature determines the amount necessary for each of these funds and fixes it. The state auditor then, following the same general plan, that you follow, take the valuations and from that figures the rate of taxes for state purposes?

A. I presume he did but in the certificate to us, certificate to the county auditors, it always comes in certified at so many mills.

2662 Q. Well, that is the only way that it could be fixed, isn't it, the rate?

A. Yes, sir.

Q. He certified that rate to the several auditors and they add it

to the several rates which they have determined as the funds of their respective counties and make a levy and extend the taxes, is that correct?

A. Yes, sir.

Q. So I say that if the real estate valuations are lowered in the state in different counties by the local assessors or the county board in such manner that the valuations of the whole state would be lowered, then the state auditor would have, of course, to increase his rate to meet the legislative budget, wouldn't he?

A. Here is the situation. When the state board equalizes they go over the counties, they will put Cass County up to an average valuation of so many dollars an acre, Richland County to so many dollars an acre——

Q. Yes, sir.

A. —so if Fairmount township was cut out of the deal entirely in all probabilities the rate per acre would be raised in Richland county to bring up the value in Richland county so the state would have its valuation. But so far as the county goes, then your proposition is right that the lowering of valuation will raise the rate.

Q. Is it not the state auditor who figures the rate for the several state funds to meet the budget prescribed by the legislature?

A. That is my understanding that he figures it.

2663 Q. Now, the work of the state board of equalization is only to see that the valuations in the different counties are so equalized so as to make as far as possible the burden of taxation equal?

A. But the state board or the county board is the one that equalizes it between the different townships, it is an average of the county.

Q. Exactly so, in exactly the same way as the state board equalizes between counties?

A. Between counties, yes, sir.

Q. Now the state auditor takes the qualized valuations as fixed by the state board of equalization of the several counties and from that figures his rate of taxation necessary to raise the legislative budget?

A. Yes, sir.

Q. Likewise the county board, in laying a foundation for you to use in figuring the rate of taxes for the county, equalizes the real estate valuations in the several townships of the county so as to make the burdens of taxation as nearly as possible equal?

A. Yes, sir.

Q. But in all instances, Mr. Burton, the amount to be raised is the same and forms the basis on which you figure the rate of taxation upon the assessed valuation, that is correct?

A. That is correct. But the difference in regard to the raising of rates or the lowering the valuations does not apply to the state as it does to the county. You will notice that, by the assessment of Fairmount township in 1915 and 1916, a reduction in Fairmount township for 1915 and a lower rate from the state.

Q. Exactly, I understand that, but that simply means that
2664 where you had this reduction in Fairmount township of certain lands you had to have a sufficient valuations of the other lands of the state to meet the legislative budget?

A. Yes, sir, that is the idea.

Q. I think it was testified here by the local assessor, Mr. Burton, that in fixing the valuations for assessment purposes these lands in the Bois de Sioux valley, so-called, that he fixed them one to two dollars an acre less than the lands outside of the Bois de Sioux valley?

Mr. Bronson: When?

Mr. Palmer: Always.

Mr. Bronson: He did not so testify. We object to your assumption that he did so testify and asking for the opinion of this witness on such assumption.

Mr. Palmer:

Q. Are you prepared at this time to say whether the valuations were so left?

A. They were left in the assessment of 1916 on those purported flooded lands less than they were for 1915.

Q. In 1915 I understand you to say that these lands together with the other lands in Richland County were raised?

A. Yes, sir.

Q. Raised 35 per cent by the state board of equalization, and in 1916 they were left substantially as fixed by the county board of equalization?

Mr. Bronson: No, he did not testify to that.

A. Reduced 10 per cent.

Mr. Palmer:

Q. From the county board of equalization figures. Well, 1917, they were left as fixed by the county board?

A. Yes, sir.

Q. But you were asked and I think I made the objection
2665 at the time that you had not shown sufficient familiarity with the situation to answer the question whether the so-called flooded lands were assessed on substantially the same basis of valuation as lands outside of the Bois de Sioux valley. Do I understand that you wish to testify to that as a fact?

A. My recollection is I stated that many of these pieces of flooded land as shown on that list there were assessed up pretty well towards the average assessment there or the high point assessment in the township. Not all of them, of course, because——

Q. Do you know anything about whether these alleged flooded lands were ever assessed as much as the lands outside of it?

A. I couldn't testify only to my opinion and general information.

Q. What is your opinion as to that?

A. The assessment there for 1915 will show, I think as compared

with other lands in the assessment will show that, without any particular testimony on my part.

Q. Will you do that? As I understand it you are not going to leave those assessment books here?

A. No, I can't.

Q. I wish you would make that comparison and tell me whether it is a fact or not. I want to see whether you are right or the assessor is right.

A. The east half of 20, 129, 47, that is a piece of land that lays right west from Blackmer station——

Q. Do you understand that was flooded land?

2666 A. No, it is not flooded land, but I was getting the valuation of it.

Q. There has been no testimony in regard to whether it was flooded or not?

A. It is not in the list there of flooded lands.

Q. All of section 20 appears to be in the flooded district?

A. All of 20, 129, 47?

Q. Yes.

A. Some of those lands right around Blackmer, of course these flooded lands do not compare with those——

Q. What I wish to direct your attention particularly to, Mr. Burton, is whether you wish to testify that these alleged flooded lands were assessed prior to being affected by the floods just as high as the lands outside of the flooded district?

A. Well, no, I don't think that they were in that respect.

Q. It has been testified here by the local assessor that they were assessed from one to two dollars an acre less. Do you think that is substantially correct?

A. Well, I should think so.

Q. You take the lands that you had in mind in speaking of their being assessed well up towards the top; those are lands where the buildings and improvements lie out of the flooded district and a portion of the same farms might have been affected by the flood waters, that is what you had in mind, wasn't it?

A. Yes, sir. Quite a lot of that land, of course, I never — of its being flooded until 1915.

Q. Well, I take it you never lived in that locality?

A. No, sir, I never lived there.

2667 Q. And I presume you saw it usually in the fall when the campaign was on and you were electioneering?

A. No. I saw it more in hunting than in other ways.

Q. Now, Mr. Burton, I want you to take for illustration here the southeast quarter of section 21 township 129, of range 47 and compare its value for assessment purposes in 1915 with, say, the northwest quarter of section 33 in township 130, of range 47?

A. $1,769.

Q. What is it for the southeast quarter of 21, 129, 47?

A. $1,612 for 1915.

Q. I wish you would take lots 1-2, 3 and 4 in section 21 and lot 4 in section 28, 129, 47. What was the assessed valuation for 1915?

A. $1,200.

Q. Compared with the southeast of 18, same township and range, what is it in 1915?
A. $1,769.
Q. I have it $1,925.
A. That includes the structures.
Q. But exclusive of structures they stand $1,200 to $1,769?
A. Yes, sir.
Q. You take the lands that were really within this flooded district where the buildings and all were within the flooded district in 1915 and 1916, and isn't it true, Mr. Burton, that those lands have always been considered of less value, both upon the market and for assessment purposes, than the lands lying out of reach of the overflow of the Bois de Sioux river?
A. Undoubtedly that is true as a whole.

2668 Redirect examination.

By Mr. Bronson:

Q. It would appear, Mr. Burton, from these exhibits 36 and 37 that the lands in Richland County are, for purposes of assessment, assessed near the top of any lands in the state, doesn't it?

Mr. Palmer: Well, if it appears, what is the use of having him swear to it?

A. That is the way I understand it from the records that I get from the state auditor.

Mr. Bronson:

Q. And it would appear that the lands in Fairmount township in Richland county are, comparatively speaking for assessment purposes, assessed as high as any other lands in Richland County?
A. No, not as high as any other land in Richland county.
Q. Would you say on the average Fairmount township lands are assessed towards the top or bottom in Richland county?
A. Assessed towards the top on the lands in the county but not——
Q. In other words, that the lands, in Fairmount township in Richland county for assessment purposes are as valuable generally speaking as any other lands in Richland county?

Mr. Palmer: That is objected to as incompetent and irrelevant, assuming facts not established by any testimony, not the best evidence, not redirect examination.

A. No, they are not assessed to as high a valuation as they are in—well I think several other districts, but they come within the class of land in the county that are assesed at a high average per acre.

Mr. Bronson:

Q. They come within a class of lands in the county
2669 assessed at a high average per acre?

A. Yes, sir.

Q. And I get it, generally speaking, from your testimony, that these lands that were flooded in the years 1915 and 1916 by those flood conditions that we have talked about are some of them towards the top in Fairmount township for assessment purposes?

Mr. Palmer: That is objected to as repetition and assuming something not established by any testimony in the case.

A. That "towards the top" is perhaps indefinite, but some of the lands would be toward the top but not to the top.

Mr. Bronson:

Q. And I take it also, generally speaking from your testimony, that the lands in this flooded territory do not vary, as compared with the lands in Fairmount township not in the flooded territory, more than from one to two dollars per acre for original assessment purposes?

A. Well, I don't know, but I should figure that among the lands in this flooded land there would be more variation in that rate.

Q. I am trying to get you, from your general knowledge of Fairmount township, to give an average comparison between the lands in this flooded area and that were flooded in the years 1915 and 1916, the general average of those lands for assessment purposes, as compared with the general average of lands in Fairmount township not flooded in the years 1915 and 1916; and if I recollect the cross-examination your general testimony is to the *affect* that the valuation for assessment purposes per acre on these lands within the flooded territory does not vary on the average more than one to two dollars per acre as compared with those not in the flooded district. Is that right?

2670 A. Well, I couldn't tell exactly, I should estimate somewhere near that variation, that is prior to the——

Q. Prior to the existence of these flooded conditions?

A. Prior to the existence of these flooded conditions, that it might be a little more variation but it might not be quite so much, I couldn't say.

Q. Now, it would therefore appear, that these lands in this flooded district, namely, the flooded conditions that existed during the years 1915 and 1916, for assessment purposes in the township of Fairmount, averaged up to within from one to two dollars per acre at outside limits to the remaining land in Fairmount township, and that lands in Fairmount township averaged up well for assessment purposes with the remaining lands in Richland county, and that the lands in Richland county for assessment purposes in the state averaged well towards the top of other lands in the state; that is a general synopsis of the situation, isn't it?

Mr. Palmer: That is objected to as leading, assuming facts not established by any testimony in the case, as embodying three questions in one, as containing matter wholly irrelevant to any inquiry here and assuming in part a contradiction of the witness' own testimony.

A. It seems to me it is simply calling for an opinion——

Mr. Pinkney: Answer the question, Mr. Burton.

A. —because I should rather conclude that the average of the land in the flooded area would run at least, take it all the lands in the flooded area would run anyway $2 an acre above the average of all the other lands in the township.

Mr. Palmer: Above or below?

2671 A. —below, because some of the highest priced lands in the county sell for more——

Mr. Bronson:

Q. You mean in the flooded district?

A. No, outside of the flooded district, so it is just simply a guess at it. I couldn't tell unless I would go to work and figure up those valuations of those lands for back years and then strike an average.

Q. That is true, isn't it, as to all of your testimony with reference to the comparative valuations per acre on your estimate of one to two dollars between the flooded lands and the lands not flooded, it is just simply guess work?

A. As far as that is concerned the assessor would be a much more capable witness than I would be because he has gone over every piece individually.

Q. You have been over the state of North Dakota to some extent?

A. To some extent.

Q. Travelled over it?

A. Well, I have been clear through the state.

Q. Generally speaking, will you term the lands in Richland county to be good farming lands?

A. I would.

Q. And as good or worse than those in the remaining parts of the state?

Mr. Palmer: I object to this as entirely immaterial, not redirect examination.

A. I think this county will hold up pretty well with other parts of the state.

Mr. Bronson:

Q. And do not the comparative assessment valuations of land per acre as shown by this exhibit 37 illustrate that comparison of land values for farming purposes in the state of North Dakota?

2672 A. I think it does.

Q. Counsel has asked you several questions concerning

equalization proceedings, both of county and state. I will ask you to state whether the township assessor, taking his assessment annually at the time you have stated between April and June first of each year, takes the assessment value of the year previous customarily in making the assessment?

Mr. Palmer: That is objected to, the witness not having shown himself competent to testify.

A. I couldn't state for certain.

Mr. Bronson:

Q. You don't know how the assessor does that?

A. I have no particular means of knowing, some times I have a suspicion.

Q. The township assessors of the various townships in this county get their assessment books, make their assessments and return the books to the county?

A. Yes.

Q. And when the books are returned to the county do the valuations of all the lands in Fairmount township appear as made by the township assessors and have they also the equalizations as made by the township boards?

A. Well, as the township board of review that is supposed to review the books.

Q. Before their return?

A. Before their return to the auditor's office.

Q. So the method of operation under customary proceedings is that the assessor makes the valuations at the time you have stated and then the township board of review passes upon them?

2673 A. Supposed to.

Q. Supposed to pass upon them and then they are returned to the county. Then the county board of equalization sits and acts as a board of equalization upon the assessments relative to the assessments of each county?

A. The county board reviews them and they try to bring up the valuation of property to an equalized basis, to an equal basis throughout the various taxing districts.

Q. That is, equalized between the townships?

A. Equalized between the townships.

Q. And then it goes to the state board of equalization it seems, and the assessments made in Richland county, for instance they get it there and the county board acts there and you have the assessment made in each township and for all the townships for the equalization proceedings and those proceedings based upon such assessment then go to the state board of equalization?

A. Yes, we make out an abstract showing how all kinds of property is left by the board of county commissioners with the copy of proceedings of equalization.

Q. The state board of equalization equalizes, as you understand it, between the counties?

A. Between the counties.

Q. Counsel has asked you some questions about what the state auditor does. Have you got any personal knowledge about that?

A. No more than a general knowledge of his duties under the law in connection therewith.

Q. Now there are certain fixed mill or portions of a mill tax which are defined and certain each and every year for state revenues, are there not? Like the terminal elevator portion of the mill

2674 tax for instance.

A. I really don't remember under the law in regard to that terminal elevator tax whether it specifies a certain amount in mills or—but I think it does. Of course their levy comes to us at the auditor's office.

Mr. Palmer:

Q. That is, whether it specifies a certain amount or the maximum?

A. Yes, sir, but of course as far as the state general levy is concerned that could not exceed 4 mills but might be less.

Mr. Bronson:

Q. In stating the state levy on the terminal elevator fund for the years 1915 and 1916, you stated .125 mills. Now, you don't intend to testify do you that the state auditor fixes that amount of the proportion of the mill that is levied?

A. Well, no, that terminal elevator, I don't just now remember the law in regard to that terminal elevator fund, whether it is a specified mill levy or whether it is a fixed amount. Now we have in the county general school fund, that is a fixed 2 mill levy, but for 1915, and 1916, the state law limiting levies cut down the 2 mill rate so that we had less than 2 mills.

Q. The point I am trying to ascertain from you is whether you have any knowledge as to whether or not the terminal elevator fund is constituted by a state levy of ⅛ of a mill annually for the purpose of the terminal elevator fund?

A. My recollection is it is a mill levy.

Q. And that the returns that would accrue to this terminal elevator fund would depend upon the property valuation within the state, wouldn't it?

A. It would.

2675 Q. And if the valuations were higher the returns would be greater?

A. Greater.

Q. And if they would be less they wouldn't be so great?

A. Yes, sir.

Q. You also understand that the limitations of the state levy within the state of North Dakota is 4 mills?

A. I do.

Mr. Palmer: For a general fund?

Mr. Bronson:

Q. For a general fund?
A. Yes, sir.
Q. And that if this 4 mill levy for state purposes has been levied every year since statehood the amount received would therefore depend upon the valuations, in that true?

Mr. Palmer: That is objected to as argumentative and leading, assuming a fact not established by the testimony in this case, incompetent, irrelevent, immatrial, witness not shown himself competent to testify, simply an argument and it expressly appears from the evidence that that is not true.

A. I should think it would, that is if the 4 mill levy has been *has been* levied every year, of course, the amount would be according to the valuation.

Mr. Bronson:

Q. Ever since you have been county auditor the state levy every year has been 4 mill- or more, has it not?
A. According to my recollection.
Q. For state purposes?
A. For state purposes.
Q. Therefore, the amount received by the state of North Dakota would depend upon the valuations of the taxable property within the state?
A. It would in the amount of mills that has been levied.

2676 The Commissioner: I presume the witness intended to say, mill rate or fraction of a mill.

A. That is my idea of it, it is either a mill or a fraction of a mill rate.
Mr. Bronson: In other words, your understanding is there is ⅛ of a mill levied annually for the purposes of the terminal elevator fund by the state of North Dakota?
A. That is my opinion.
Q. You have spoken about the state auditor preparing an amount to be raised by taxation from the legislative budget. Do you know anything about that in particular?
A. Well, I have seen the published budget.
Q. Do you know that every budget of the state by legislative provision is made payable only as it is available out of taxes collected?

Mr. Palmer: That is objected to as argumentative, assuming something not established by any evidence in the case, witness not shown himself competent to testify.

A. I should suppose so, I think that is the condition of all taxes.

Mr. Bronson:

Q. In other words, if the legislature as a part of this budget had appropriated two million and a half dollars and the valuations as made upon the assessment within the state at four mills on the dollar would only create two million dollars and if the valuations are already fixed by the state board of equalization, I don't understand you to testify that the state auditor has any authority to raise the amount of the mill levy to be made or that the state auditor has any authority to raise the amount of the valuations?

2677 Mr. Palmer: Same objection as last above stated.

A. I don't think that the state auditor has any right to raise the valuation, I think that is for the state board.

Br. Bronson:

Q. As a matter of common knowledge, you have resided in this state some 22 years, as a matter of ordinary and customary *know* you may state if the revenues of this state from the time that you have lived here have not always depended, what revenues it had, have not always depended upon the question of what the valuations were times four mills per dollar?

Mr. Palmer: That is objected to as argumentative and leading, not re-direct examination, assuming facts not established by any testimony in the case, not the best evidence, wholly irrelevant, no foundation laid.

A. I don't just exactly gather the drift of that but my recollection would be that the levies in the state for many years have always been up to four mills. Just how many I couldn't say without referring to my record.

Mr. Bronson:

Q. Therefore, the amount of revenues of the state would depend upon the valuation?

A. Well, there is no question but what the revenue derived from valuations would depend upon the rate.

Q. Certainly, but I am asking you—we are assuming that since statehood there has always been a levy of 4 mills by the state for state purposes and therefore, if such is the case, the amount of the revenue derived from taxation would depend upon the valuation, wouldn't it?

Mr. Palmer: That is objected to as argumentative and for all the reasons last above stated.

A. Under that proposition it certainly would.

Mr. Bronson:

Q. And there has always been a question of being able to
2678 raise enough revenues for state purposes, has there not?

Mr. Palmer: That objected to as argumentative, the witness not shown himself competent to testify, leading, assuming a statement not established by any testimony in the case, not the best evidence, not a question, simply an argument.

A. It has been the understanding that for many years it has been hard work to raise the amount of revenues the state wanted.

Mr. Bronson:

Q. Now coming to this question of the actions of the state board of equalization. When the county board has made its equalizations, it has before it the assessment made by every township in the county, hasn't it?

A. Yes, it has before they get through anyway.

Q. It has before it gets through?

A. Yes, sir.

Q. Sometime during the proceedings the county board of equalization has before it every assessment made in the country?

A. Yes, sir.

Q. From every township. Now as you said that is equalized by the county board of equalization, you make an abstract of it and your total assessment goes to the state board of equalization as you abstract it, doesn't it?

A. The total assessment, as far as assessor is concerned yes, sir, as far as the assesment is made by the assessor.

Q. And as equalized by the county board?

A. Yes, sir.

Q. The valuations made on the assessments?

A. Yes, sir. There are other assessments come in, special assessments, and then the assessments from the state board.

The Commissioner:

2679 Q. It is clear that the final figures fixed by the county board of equalization are the ones that are certified to the state, the final figures fixed by the county board of equalization are certified to the state?

A. Yes, sir.

Mr. Bronson:

Q. So that when the state board of equalization is setting it has a compilation of the valuation as made by the county board of equalization and as made by each township in that county?

A. The abstract shows the valuation in the taxing district; that is it shows the total valuation of the lands—the lands in Fairmount township——

Q. In the year 1915 you were directed by the state authorities to make a horizontal raise of the assessment of your county of 35 per cent?

A. We were.

Mr. Palmer: Of real estate?

A. Of real estate.

Mr. Bronson: So that on the county board proceedings and abstract which were certified up to the state board of equalization after that direction and authority from the state, the county authorities proceeded to make this horizontal raise, did they not, of 35 per cent on each and every single tract situated in Richland County?

A. That direction comes right direct to the county auditor of each county to proceed to raise or lower.

Q. Now, if a piece of land in this flooded district had been assessed in 1914, at $2,000 and has been assessed in 1915 at $1,000, there would have been a difference in the amount of taxes that would have been returned to the county between the years 1914 and 1915, would there not?

2680 Mr. Palmer: That is objected to as argumentative, assuming a fact not established by any testimony and as incorrect upon its face, as leading, cross-examination of his own witness contradictory of his former testimony.

A. That is something that would be hard to tell.

The Commissioner:

Q. Isn't it true that the taxation rate is determined after the final assessment figures are established?

Mr. Palmer: After the valuations figures are fixed.

The Commissioner:

Q. After the valuations figures are fixed; isn't it true that the rate of taxation is fixed subsequently?

A. That is, the rate of taxation.

Q. Yes, for county purposes?

Mr. Palmer: Is fixed after the valuation?

A. Yes, sir, after the valuation.

Mr. Bronson:

Q. Yes, for county purposes and county general fund. If in the year 1915, land in the flooded district was assessed at $1,200 by the county board as equalized by the county board and this went up to the state board and you received instructions from the state to make a horizontal raise of 35 per cent, you would raise that land 35 per cent on the valuation, would you not?

A. Yes, sir.

Q. In the year before 1915 the average assessed valuation for Richland county was $6.60, wasn't it?

Mr. Palmer: That is objected to as repetition.

A. It was.

Mr. Bronson:

Q. And in the year 1915, not based on the action of the county board off equalization or on the valuations as made by the
2681 assessor, you received from the state directions to make a horizontal raise of 35 per cent on the basis of the valuation of 1914, did you not?

Mr. Palmer: That is objected to as repetition also assuming a fact not established by any testimony in the case.

A. We got the—that on the basis of 1914—of course, the county board equalizedl it on the *the* basis of 1914, but for what reason the state made the raise——

Mr. Palmer:

Q. That raise was on the valuation of 1915?
A. That raise was on the valuation of 1915. I have no knowledge of why the state board raised up 35 per cent.

Mr. Bronson:

Q. No, you haven't any knowledge about that definitely, but you know in 1914 the average assessment of valuation for Richland county was $6,60?
A. Yes, sir, I know it.
A. And you do know that in 1916 you received directions from the state officials to make horizontal raise of 35 per cent on that average valuation?

Mr. Palmer: That is objected to as repetition.

A. That is for 1915, you mean?

Mr. Bronson:

Q. For 1915, yes, I mean 1915?
A. Yes, sir, directed a raise of 35 per cent.
Q. And that 35 per cent raise was made upon the valuations you had before you, wasn't it?
A. They were.
Q. If those valuations had been $10,000 more and you had received from the state authority to make a horizontal raise of 35 per cent that would be a 35 per cent horizontal raise on that $10,000, wouldn't it?

Mr. Palmer: That is objected to as argumentative, assuming facts not established by any testimony in the case and leading.

2682 A. Probably would if they had made the 35 oer cent raise.

Mr. Bronson:

Q. So that in the year 1915 the returns that came to the county of Richland; and when I speak of the returns that come to the county of Richland, all taxes are paid to the county, are they not?

A. Yes, sir, all taxes are paid to the county.

Q. And you repay the state's portion of the taxes to the state?

A. Yes, sir.

Q. The amount of returns due the state depended upon the valuations in Richland County *times* 4.3 mills?

Mr. Palmer: That is objected to as incorrect upon its face, assuming a fact not established by any testimony in the case and for the reason that the witness has already stated the valuation was first fixed and the rate is fixed by taking the proportionate part of the amount to be raised of the valuation.

A. Certainly it would be, the amount due the state would be governed by the valuation and the rate.

Mr. Bronson:

Q. Now one more question. If those valuations had been higher in 1915 there would have been a greater return to the state on the 4.3 mill levy?

A. No question but what there would be.

Q. Mr. Burton, will you state the final valuation for assessment purposes in the year 1915 of the following described land: Southwest quarter section 16, township 129, range 47, Fairmount township?

A. $1,643.

Q. The northwest quarter of said section?

A. $1,643.

Q. The southeast quarter of section 17, said Fa*ri*mount
2683 township, without the improvements?

A. $1,698.

Q. State likewise the northwest quarter of section 18, township 129, range 47?

A. $1,769.

Q. Northeast quarter of said section 18?

A. $1,769.

The Commissioner:

Q. Are these valuations all exclusive of the buildings?

A. These are valuations exclusive of the buildings.

Mr. Bronson:

Q. The northwest quarter of section 8, 130, 48, De Villo township?

A. $1,176.

Q. Northwest quarter of section 17, same township?

A. $1,391.

Q. Southeast quarter of section 6, township 130, range 49, Valdo township?
A. $862.
Q. Northwest quarter of section 7, same township?
A. $813.
Q. Northeast quarter of section 9, township 130, range 50, Brightwood township?
A. $714.
Q. Northeast quarter of section 19, same township?
A. $1,188.
Q. Northeast quarter of section 3, township 129, range 49, Greendale township?
A. $1,098.
Q. Southeast quarter of section 4, township 129, range 48, Le Mars township?

2684 Mr. Palmer: If your honor please, we object to putting in these assessment books in this fashion and we ask that the entire assessment books be put in and made a part of the record, rather than isolated excerpts therefrom. We call your honor's attention to the fact that the witness is reading from the assessment books we object to it as not the best evidence and we ask that the court require the entire assessment books for that year to be put in evidence.

A. $1,148.

Mr. Bornson:

Q. In the year 1916 do you know whether any action was taken by the board of county commissioners concerning an abatement of taxes on lands in the flooded district?

Mr. Palmer: That is objected to as not the best evidence incompetent, irrelevant and immaterial.

A. I don't remember.

Mr. Bronson:

Q. Or when was it, 1915 or 1916?
A. I think you refer to 1915.

Mr. Palmer: Answer that yes or no.

A. Yes, there was——

Mr. Palmer: We object, that is sufficient.

Mr. Bronson:

Q. There was action taken?
A. Action taken? Well, there was action taken by the board, yes, but it was not an abatement.
Q. Were you present when the action was taken?
A. I was.

Q. What was the nature of the action?

Mr. Palmer: May I ask the witness a question. Was that in the way of action duly recorded in writing among the proceedings of the board of county commissioners?

A. It was, in the way of a resolution.

2685 Mr. Palmer: That is objected to as not the best evidence, incompetent, irrelevant, and immaterial, hearsay.

Mr. Bronson:

Q. There was a resolution passed concerning that matter by the board of county commissioners?

A. There was a resolution passed by the board of county commissioners in 1915 relative to the taxes in this flooded area.

Q. And you were present and heard it adopted and passed?

A. I was present and heard it adopted.

Q. And heard it read?

A. I did.

Q. And recorded it in your office?

A. It is.

Q. You may state the substance of it.

Mr. Palmer: That is objected to as not the best evidence, incompetent, irrelevant and immaterial, and hearsay. I want to ask a question. Is that still a matter of record in your office, Mr. Burton, that resolution?

A. It is in the Commissioners' proceedings.

Mr. Palmer: Objected to as not the best evidence.

Mr. Bronson:

Q. You may state whether or not there was a petition made by those residents in this flooded district for an abatement of taxes to the board of county commissioners.

Mr. Palmer: Same objection.

A. There was a petition made for an abatement of taxes in the flooded area.

Mr. Bronson:

Q. And was that petition brought up for consideration and hearing by the board of county commissioners?

A. It was.

Q. And is their action on that petition disclosed by this resolution that you speak — that is of record?

2686 A. It is if I recollect it.

Q. Will you make out a certified copy of that resolution, Mr. Burton, and send it down here for use as evidence in this case, to be marked Complainant's Exhibit 38?

The Commissioner: I presume the records should show that it is subject to Mr. Palmer's objection that it is irrelevant and immaterial.

Mr. Bronson: Yes.

Mr. Palmer: We will make no objection to the authentication of such a copy but we shall interpose the objection that it is irrelevant.

Mr. Bronson:

Q. Now, Mr. Burton, what action was taken on this resolution so passed, as you have stated, by the board of county commissioners?

Mr. Palmer: That is objected to as not the best evidence.

A. According to my recollection the resolution was to the effect——

Mr. Bronson:

Q. I didn't ask you that, what action was taken?

A. The resolution was adopted.

Q. And then after it was adopted what action was taken by you, if you were a party towards carrying it into effect, what instructions, if any, you gave to the assessor or anything of that kind? Did you bring it to the attention of Mr. Kurtz, township assessor?

A. My recollection is I sent down a copy of that resolution.

Q. To the township assessor in Fairmount township?

A. Whether I sent it to the assessor or to the chairman of the township board, I don't just remember. I think I sent it to the chairman of the township board, though.

2687 Q. Who was the chairman of the township board?

A. I think Mr. Pinkney.

Q. Charles R. Pinkney?

A. Charles R. Pinkney, I think was chairman of the board at that time.

Q. I believe you stated in your directed examination that Complainant's Exhibit 35, was prepared without the structures and improvements included?

A. I was thinking that I might have answered that way but if I did I wish to correct that because it was taken from the total equalized valuations of the lands and structures, where there are structures.

The Commissioner: The certificate as to 1914 and 1917 will also include lands and structures as assessed.

Recross-examination.

By Mr. Palmer:

Q. This resolution of the county board in relation to taxation of these lands in the flooded area was passed, do I understand you, in 1915?

A. In 1915.

Q. In the autumn of that year?

A. To my recollection somewhere in the autumn.

Q. Was it furnished to the assessor and to the township board that fall?

A. Copies?

Q. Yes.

A. I don't recollect I forwarded more than one copy. I think
2688 I forwarded a copy to the chairman of the board of supervisors of Fairmount township.

Q. When?

A. Soon after the commissioners had passed the resolution.

Q. And it was furnished to the assessor prior to beginning his labors for 1916?

A. I presume so but it was, of course the resolution to my recollection was directed more to the board of supervisors as a recommendation.

Q. At all events, it was prior to——

A. Prior to the 1916 assessment, yes, sir.

Q. Counsel for the state of North Dakota incorporated into one of his questions a statement that the limitation, either constitutional or statutory, of taxation for state purposes and 4 mills, and I think you acquiesced in that statement?

A. That is, being statutory.

Q. Yes, or constitutional?

A. I didn't so understand it because it is—the limitation is constitutional, to 4 mills.

Q. 4 mills for state purposes?

A. 4 mills for state purposes.

Q. Have you before you an official statement by which you can give me the number of mills assessed for state purposes for the year 1913?

A. No, I have not except——

Q. Isn't that correct as stated upon that tax receipt? That statement is official, isn't it?

A. I think it is.

Q. Kindly give me the figures?

2689 A. State general fund 2.875 mills, state bond sinking fund .15 mills, state bond interest fund .15 mills, state wolf bounty fund .05 mills, state bovine tuberculosis fund .05 mills, state glandered horses fund .1 mill, state education institution tax 1.125 mills.

Q. Is that the total for state purposes?

A. Total for state purposes 4.5 mills.

Q. You cracked the constitution that year?

A. Pretty near it.

Q. Take 1914, have you before you an official statement from which you can give the levy for state purposes that year?

Mr. Bronson: The line of examination is objected to upon the ground that it calls for a legal conclusion of the witness, improper redirect, examination, not the best evidence, asking for a mere opinion of the witness.

A. State general fund 3 mills, special tax fund 1 mill, state bond sinking fund .2 mills, state bond interest fund, .1 mill, total 4.3 mills.

Mr. Palmer:

Q. Cracked the constitution again that year, didn't you?
A. Pretty near.
Q. 1915? Will you give me the official statement of the state levy for that year?
A. State general fund 3.875 mills, terminal elevator fund .125 mills, state bond interest fund .1 mill, state bond sinking fund .2 mills. I guess that is a total of 4.3 mills.
Q. Cracked the constitution that year too, didn't you, Mr. Burton?
A. I suppose that the state general fund and the terminal
2690 elevator fund made the 4 mills, which was the limit, and the state bond interest fund and the state bond sinking fund was additional to the 4 mills.
Q. Take 1916, give me that.
A. Well they had for 1916 state general fund 3.875 mills, terminal fund .125 mills, making the 4 mills.
Q. I understand you to say that the terminal elevator fund is not within the limitation of 4 mills, it is a fund outside of the limitation?
A. Well, that is something I don't know.
Q. You don't know as to that, Mr. Burton?
A. No, sir.

Redirect examination.

By Mr. Bronson:

Q. In the lear 1916 the levy for general purposes in the state general fund 3.875 mills, terminal elevator fund .125 mills which makes a total of 4 mills, doesn't it?
A. Yes, sir.
Q. You don't see any constitution cracked there, do you?
A. Not exceeding the limit.
Q. Now in 1915 you see that the state general fund is 3.875 and terminal elevator fund .125 which makes 4 mills?
A. It does.
Q. You see in addition to that the state bond interest fund and the state bond sinking fund, amounting to .3 mills, you don't know anything about whether that comes within the con-
2691 stitutional limit or not, do you?
A. The state bond and the sinking fund and the other fund would evidently come outside of the constitutional limitation.
Q. You don't know anything about that particularly, do you?
A. Well, I should conclude it did come out of the constitutional limit of 4 mills because they are levied——
Q. I am asking you the question whether you think that the state interest fund levy and the state bond sinking fund levy has anything to do with the 4 mill- state levy.

A. I told you I didn't think it had.

Q. Now in 1914 you have state general fund 3 mills, special tax fund 1 mill in addition to this the sinking fund and the state interest fund .3 excess, have you not?

A. The same in the state bond sinking and the state bond interest.

Q. There is .3 excess for 1914?

A. Yes, sir.

Q. The .3 excess for 1914 applies to the state bond sinking and the state bond interest fund, doesn't it?

A. Yes, sir.

Q. The excess for 1913 over the 4 mills applies to the state bond sinking fund, state bond interest *interest* fund, state wolf bounty fund, state bovine tuberculosis fund and state glandered horses fund, doesn't it?

A. I think so.

2692 COPY OF COMPLAINANT'S EXHIBIT NO. 35.

Description and Valuation of Certain Lands in Fairmount Township, Richland County, North Dakota, for the Years 1915 *and* 1916, *on which All Taxes were Extended for said Years, viz:*

Description.		1915 Val.	1916 Val.
10-130-47,	lot 1	$230	$81
15-130-47,	w. ½ of n. e. ¼—Lots 3-4	1,081	373
	n. w. ¼—w. ½ of s. e. ¼ lots 1-2 less r. o. w.	3,090	2,505
	s. w. ¼ less r. o. w.	1,461	1,239
21-130-47,	s. e. ¼ ex. r. o. w.	1,769	1,328
22-130-47,	n. w. ¼ of n. e. ¼—n. e. ¼ of s. w. ¼ lots 2-3 ex. r. o. w.	1,631	566
	n. w. ¼ ex. r. o. w.	1,501	518
	Lot 4 ex. r. o. w.	86	32
	w. ½ of s. w. ¼ lot 1 ex. r. o. w.	1,098	381
27-130-47,	n. w. ¼ of n. w. ¼—s. ½ of n. w. ¼ Lots 1-2	1,129	389
	n. e. ¼ of n. w. ¼ or lot 3	150	57
28-130-47,	n. e. ¼	2,129	1,892
	s. ½	3,835	3,189
33-130-47,	n. w. ¼ of n. e. ¼ lots 1-2-3-4	1,612	568
	s. w. ¼	2,375	1,848
4-129-47,	w. ½ of w. ½	1,737	1,215
	Lots 3-4	513	219
	e. ½ of s. w. ¼—s. w. ¼ of n. e. ¼—w. ½ of s. e. ¼ lot 2	2,859	1,021
	Lot 1	206	89
9-129-47,	e. ½ of n. w. ¼—w. ½ of n. e. ¼.	1,636	641
2693			
	e. ½ of s. w. ¼—w. ½ of s. e. ¼	1,516	518
	w. ½ of w. ½	1,643	1,037
	Lots 1-2-3-4	427	178
15-129-47,	All	554	227

Description.		1915 Val.	1916 Val.
16-129-47,	s. w. ¼	1,643	518
	n. w. ¼	1,643	518
	Lot 1	253	105
	s. e. ¼ of n. e. ¼	316	130
	w. ½ of n. e. ¼	632	259
	s. e. ¼	1,612	597
17-129-47,	s. e. ¼ less r. o. w.	2,058	803
20-129-47,	e. ¼ of n. w. ¼—n. e. ¼ of s. w. ¼	1,233	551
21-129-47,	n. w. ¼ less r. o. w.	1,469	510
	n. e. ¼	1516	571
	s. w. ¼ less r. o. w.	1,453	494
	s. e. ¼	1,612	734
22-129-47,	w. ½ of w. ½ of lots 1-2-3-4	1,200	614
27-129-47,	w. ½ of s. w. ¼	752	365
	s. w. ¼ of n. w. ¼ lot 3	530	219
	Lot 4—n. w. ¼ of n. w. ¼	619	162
28-129-47,	n. e. ¼ less r. o. w.	1,469	972
	e. ½ of s. w. ¼ w. ½ of s. e. ¼ e. ½ of w. ½ of s. w. ¼ less r. o. w.	1,879	1,814
	n. w. ¼ less r. o. w.	1,501	510
	e. ½ of s. e. ¼ less r. o. w.	712	405
	w. ½ of w. ½ of s. w. ¼	611	323
29-129-47,	e. ½ of n. w. ¼—n. e. ¼ of s. w. ¼	1,327	551
2694			
	s. e. ¼ of s. w. ¼	443	130
32-129-47,	w. ½	3,032	1,620
	e. ½ of s. e. ¼	759	324
33-129-47,	e. ½ of e. ½ ex r. o. w.	1,919	1,338
34-129-47,	w. ½ of e. ½ of lots 1-2-3-4	869	405
	s. w. ¼—w. ½ of n. w. ¼ less r. o. w.	2,353	978

2695 *Descriptions and Valuations of Certain Lands in Fairmount Township, Richland County, North Dakota, for the Years* 1914 *and* 1917, *on which all Taxes were Extended for said Years, viz:*

Description.		1914 Val.	1917 Val.
10-130-47,	Lot 1	132	174
15-130-47,	w. ½ of n. e. ¼ lots 4-3	746	827
	n. w. ¼—w. ½ of s. e. ¼ lots 1-2 less r. o. w.	2,467	2,717
	s. w. ¼ less r. o. w.	1,023	1,117
21-130-47,	s. e. ¼ ex. r. o. w.	1,452	1,624
22-130-47,	n. w. ¼ of n. e. ¼ of s. w. ¼ lots 2-3 ex. r. o. w.	1,115	1,216
	n. w. ¼ ex. r. o. w.	1,267	1,146
	Lot 4 ex. r. o. w.	46	65
	w. ½ of s. w. ¼ lot 1 ex. r. o. w.	779	841

Description.		1914 Val.	1917 Val.
27-130-47,	n. w. ¼ of n. w. ¼—s. ½ of n. w. ¼ lots 1-2	660	870
	n. e. ¼ of n. w. ¼ of lot 3	85	116
28-130-47,	n. e. ¼	1,794	2,072
	s. ½	2,823	3,421
33-130-47,	n. ¼ of n. e. ¼ lots 1-2-3-4	1,029	1,232
	s. w. ¼	1,794	1,893
4-129-47,	w. ½ of w. ½	1,227	1,186
	Lots 3-4	343	471
	e. ½ of w. ½ s. w. ¼ of n. e. ¼—w. ½ of s. e. ¼ lot 2	2,218	2,277
	Lot 1	171	196
9-129-47,	e. ½ of n. w. ¼—w. ½ of n. e. ¼	1,109	1,360
2696			
	e. ½ of s. w. ¼—w. ½ of s. e. ¼	1,056	1,160
	w. ½ of w. ½	1,267	1,160
	Lots 1-2-3-4	284	392
15-129-47,	All	370	500
16-129-47,	s. w. ¼	1,267	1,392
	n. w. ¼	1,267	1,392
	Lot 1	172	232
	s. e. ¼ of n. e. ¼	211	290
	w. ½ of n. e. ¼	462	580
	s. e. ¼	660	1,261
17-129-47,	s. e. ¼ less r. o. w.	1,529	1,871
20-129-47,	e. ½ of n. w. ¼—n. e. ¼ of s. w. ¼	950	1,044
21-129-47,	n. w. ¼ less r. o. w.	1,228	1,124
21-129-47,	n. e. ¼	1,359	1,199
	s. w. ¼ less r. o. w.	1,056	1,109
	s. e. ¼	1,477	1,360
22-129-47,	w. ½ of w. ½ or lots 1-2-3-4	950	1,174
27-129-47,	w. ½ of s. w. ¼	686	681
	s. w. ¼ of n. w. ¼ lot 3	436	479
	lot 4 n. w. ¼ of n. w. ¼	238	341
28-129-47,	n. e. ¼ less r. o. w.	1,023	1,124
	e. ½ of s. w. ¼ w. ½ of s. e. ¼—e. ½ of w. ½ of s. w. ¼ ex. r. o. w.	1,558	1,726
	n. w. ¼ less r. o. w.	1,056	1,146
	e. ½ of s. e. ¼ less r. o. w.	495	544
	w. ½ of w. ½ of s. w. ¼	337	538
29-129-47,	e. ½ of n. w. ¼—n. e. ¼ of s. w. ¼	950	1,044
	s. e. ¼ of s. w. ¼	317	348
2697			
32-129-47,	w. ½	2,534	2,784
	e. ½ of s. e. ½	528	696
33-129-47,	e. ½ of e. ½ ex. r. o. w.	1,194	1,391
34-129-47,	w. ½ of e. ½ or lots 1-2-3-4	462	667
	s. w. ¼ w. ½ of n. w. ¼ less r. o. w.	1,755	1,860

STATE OF NORTH DAKOTA,
County of Richland, ss:

I, F. A. Burton, Auditor of Richland County, North Dakota, do hereby certify that the foregoing descriptions and valuations are true and correct as same are shown by the assessment books of Fairmount Township, Richland County, North Dakota, for the years 1914 and 1917.

Dated at Wahpeton, N. D., this 15th day of November, 1917.

(Signed) F. A. BURTON,
[SEAL.] *County Auditor, Richland County, North Dakota.*

2698 *Certified Copy of Commissioner's Proceedings Referring to Flooded Lands in Fairmount Township, Richland County, N. D.*

Communication signed by members of the Board of Supervisors of Fairmount Township, stating that the said Board had received many applications for rebate of 1915 Taxes on flooded lands in said Township: that the said Board had made an examination and that the attached list showed the description of the several tracts of land damaged by flood and the number of acres of each tract on which the crop loss was total; and that the said Board recommended a rebate of 50 per cent of the 1915 taxes on the acreage shown on said list.

On motion the following resolution was adopted:

Whereas, the amount of damage by flood in Fairmount Township this year has been so extensive that a rebate of the 1915 taxes on all of the flooded lands would largely affect the tax receipts of the said Township for said year, and

Whereas, the owners of said flooded lands may derive the same benefit, without any loss of tax revenues if their lands be assessed at a lower valuation for the year 1916, therefore

Resolved, that we recommend, in lieu of abatements on 1915 taxes that the Board of Supervisors of Fairmount Township return a true and just valuation of the lands in said Township for the year 1916.

STATE OF NORTH DAKOTA,
County of Richland, ss:

2699 I, F. A. Burton, Auditor of Richland County, North Dakota, do hereby certify that the foregoing is a true and correct copy of a part of the proceedings of the Board of County Commissioners of Richland County, North Dakota, on the 17th day of November 1915, as shown by Commissioners Record "G", for said County on page 3.

Dated at Wahpeton, N. D., this 15th day of November, 1917.

(Signed) F. A. BURTON,
[SEAL.] *County Auditor, of Richland County, North Dakota.*

2700 JOHN F. BRODERICK, sworn in behalf of complainant, testified as follows.

Examined by Mr. Pinkney:

Q. State your name?
A. John F. Broderick.
Q. Where do you live?
A. Wahpeton, North Dakota.
Q. How long have you lived in North Dakota?
A. Came to North Dakota in the fall of 1880.
Q. What point in North Dakota did you locate?
A. Fargo.
Q. How long have you lived at Wahpeton?
A. Practically all that time.
Q. Practically ever since 1880?
A. Yes, sir.
Q. Do you own any land in Richland County, North Dakota?
A. Yes, sir.
Q. Will you describe the land you own in Richland County?
A. The southeast quarter of section 16, 129, 47, and the west half of the northeast quarter of the same section.
Q. Making in all, how many acres?
A. 240.
Q. How long have you owned them?
A. Since 1908.
Q. How far does that land lie from the village of Fairmount where we are now?
A. About 6 miles.
Q. Which direction?
A. South.
2701 Q. That is a school section then, section 16?
A. Yes.
Q. Were there any of those flood waters on any portion of that land in the years 1915, 1916 and 1917?
A. Yes, sir.
Q. Tell the court how many acres you had flooded in the year 1915?
A. 240 acres.
Q. In the year 1915?
A. Yes, sir.
Q. That is the entire tract then?
A. Yes, sir.
Q. How many acres did you have flooded in 1916?
A. Same amount.
Q. How many acres did you have flooded in 1917?
A. None.
Q. What crops if any did you have on those 240 acres of land in the year 1915?
A. Nothing.
Q. Wasn't there anything at all on it?
A. Nothing only my hay crop, I had a hay crop on there.

Q. It was hay land?
A. Yes.
Q. The whole of it?
A. Yes, sir.
Q. How much of that hay crop did you harvest in the year 1915?
A. I didn't harvest any of it.
Q. Will you tell the Court what the value of that hay crop
2702 was as it stood on your lands just before these flood waters destroyed it?
A. $3 per acre.
Q. That would be three times 240, is that what you mean?
A. $720.
Q. What crop did you get off that land in the year 1916?
A. Same amount I did in 1915, nothing.
Q. What was the value of that land in 1916?
A. $3 an acre.
Q. That would be $720?
A. Yes, sir.
Q. What portion of the land did you get any crop off in 1917?
A. I and my renters got a portion of the 140 acres to the best of my judgment.
Q. What was the trouble with the other 100 acres?
A. Well there wasn't anything on it to cut, bullrushes.
Q. What was the value of the 100 acres your lost in 1917?
A. $3 an acre, $300.
Q. You say you and your renters got something off of the 140 acres?
A. Yes, sir.
Q. Did you get anything off of this 100 acres?
A. No, sir.
Q. What condition was this hay land in in the spring of 1917 after it had these floods on it for this period of time?
A. In 1917, the spring?
Q. Yes, you say it was flooded in 1915 and 1916 and in 1917. What condition were your hay lands in, any hay there?
2703 A. No, sir, not to amount to anything, old grass from the year previous.
Q. What kind of crops did it have on it in 1917, this 140 acres? Did you say you and your tenants got a crop off of it?
A. It consisted of bullrushes, old grass and other flat, watery grass.
Q. Cat-tails?
A. That is what I call bullrushes, maybe it is cat-tails.
Q. That is these things that come up and have a candle shaped end on them?
A. Yes, sir, a fuzzy end.
Q. To what extent were these hay lands covered with that growth?
A. Quite a bit.
Q. Partly over it or over it in a general way, or how?
A. Over it in a general way.
Q. All over the 140 acres?

A. Yes, sir.

Q. Was that the kind of stuff you cut off of the 140 acres?

A. Yes, sir, that and water grass.

Q. What was the value of the crop you took off that 140 acres in the year 1917; give the market value of that?

A. I couldn't do it, it has no value.

Q. Didn't it have some value as hay for feeding, bullrushes for feeding or bedding?

A. I couldn't say as I could give a market value for it because I don't believe there is a market for it.

2704 Q. Wouldn't it have sold for something in the market for bedding purposes or something of the kind?

A. Can't pay freight from here to the cities for bedding purposes.

Q. Would it have been worth anything at your place for bedding purposes at your farm?

A. Yes, sir, I figured on using some of it.

Q. How much was it worth an acre, when you cut, how much less than the $3 an acre?

A. I rented the balance for $2, I guess $2 an acre.

Q. The balance of what?

A. The part of that 140. I haven't cut only about 50 or 60 acres myself and the balance I rented at $2 an acre.

Q. Then as a matter of fact——

A. As a matter of fact, it is $2 an acre.

Q. You lost $140 then on that 140 acres?

A. Yes, sir.

Q. That would be a total of $140 on that and 300 on the other according to your computation?

A. Yes, sir.

Q. Did these flood waters destroy the crop of hay that was on it?

A. Yes, sir.

Q. How much, in your opinion, would it cost per acre to replace that land with hay the same as it had on it before these flood waters came upon it?

A. I should judge $5 an acre.

Q. You think you could replace or replenish that land at the expense of $5 an acre with a hay crop as good as the one that was destroyed, is that you- judgment?

2705 A. That is my judgment.

Q. You mean 240 acres?

A. Yes, sir.

Q. That would be $1,200, is that right?

A. Yes, sir.

Q. As I understand you, all you got off of this 240 acres of land in the years 1915, 1916, 1917 is what little stuff you got off of that 50 acres in the year 1917?

A. No, sir, I rented some of that.

Q. Plus the rental of the land you rented?

A. Plus the rental *fo* the land I rented.

Q. How deep was the water on these lands of yours in there in 1915 and 1916, as you ascertained?

A. At the times I seen them, I should judge from a foot and a half to two feet and a half. I don't live there.
Q. You were down there and examined it, weren't you?
A. I was.
Q. And you found the water to be from a foot and a half to two feet deep?
A. Yes, sir.
Q. Over your entire piece of land?
A. Yes, sir.
Q. In 1917?
A. Water on it up to about June, I should judge.
Q. Water standing on until June?
A. That is right, though not like it was the other years.
Q. Not so deep?
A. No, sir.
Q. In the summer of 1917, how late was it before you could get onto the land at all?
2706 A. I got on the latter part, last two weeks in July, last week in July, I think, and first week in August, between the period of the middle of July and the first week of August.
Q. Was the land in condition to have been reseeded to pasture then in the year 1917?
A. No, sir.
Q. Was that too late in the season to reseed it for pasture, to get the grass started?
A. No, sir, not exactly, some people sow their seed in the fall.
Q. You didn't sow yours?
A. No, sir.

Cross-examination.

By Mr. Palmer:

Q. You think your damage aggregated $3,080. Have you stated those with the expectation of recovering them in this action?
A. I stated my actual damage.
Q. I say have you stated them with the expectation of recovering those damages in this action?
A. Certainly.
Q. Have you contributed money toward a fund to pay the expense of instituting and carrying on this action by the state of North Dakota against the State of Minnesota?
A. I have contributed to a fund for the assistance for attorneys, yes, sir.
Q. And has that been with the expectation and understanding that if damages are recovered by the state of North Dakota
2707 against the State of Minnesota that the state of North Dakota will pay to you your damages?
A. Why, I expect somebody to pay it.
Q. Don't you know who you expect to pay it?
A. I don't care who pays it so I get it, I lost it.

Q. Whom do you expect to do it?
A. Anybody what will give it to me.
Q. And you have no idea at this time who is to pay you those damages?
A. I don't suppose I have, no.
Q. Whom did you pay this money to?
A. I don't recollect just now who got it, I sent it down here, I know; I don't remember just exactly whom I did give the money to.
Q. For what purpose?
A. For the purpose I told you, towards as fund to hire an attorney to assist the state in this damage suit.
Q. What state?
A. State of North Dakota.
Q. Why North Dakota?

Mr. Bronson: That is objected to as asking for a mere legal conclusion, not proper cross-examination.

Mr. Palmer:

Q. Why did you pay it to North Dakota?

Mr. Bronson: He didn't say that he paid it to North Dakota.

Mr. Palmer:

Q. Paid for assistance to North Dakota?
A. I paid it to an attorney for assistance.
Q. To North Dakota?
A. For this damage suit.
2708 Q. Which side of the damage suit, North Dakota or Minnesota?
A. I certainly would not be rummy enough to pay Minnesota when the damage came in on me.
Q Will you answer my question?
A. Yes, I will.
Q. From whom did you expect to receive these damages?
A. From just exactly who happens to pay them.
Q. Whom do you expect to pay them?
A. I hope the state.

Mr. Bronson: You can answer the question, not as counsel may suggest, but answer it your own way.
Mr. Palmer: Answer it truthfully.
Mr. Bronson: Don't let him browbeat you.

A. The state of Minnesota.

Mr. Palmer:

Q. When did you buy this land?
A. I bought this land in 1908.

Q. Whom did you buy it off?
A. From the state of North Dakota.
Q. What did you pay for it?

Mr. Pinkney: I object to that as incompetent, immaterial and irrelevant, not proper cross-examination.

A. I paid $18.00 for the quarter section and $16.25 for the eighty.

Mr. Palmer:

Q. An acre?
A. Yes, sir.
Q. At the time you bought this land was there any part of it cultivated?
A. No, sir.
Q. Had any part of it ever been cultivated?
A. No sir, it was state land, had never been cultivated or
2709 broken
Q. Has it ever been broken since your acquisition of it?
A. No, sir.
Q. Has it ever had any buildings on it?
A. Yes, sir, a small shanty and a nice little barn to hold twelve head of horses, I lost that.
Q. By fire?
A. No, by wind.
Q. Has it ever had any farm buildings upon it, the usual farm buildings?
A. Not since I owned it, with the exception of the shanty and barn.
Q. Did you ever live there?
A. Not only through the haying season.
Q. Was there ever any fence placed upon it?
A. Not to my knowledge.
Q. Had anyone made any use of it prior to the time you got it?
A. Why, I presume they must have, I wasn't on it during that time prior to the time I got it.
Q. Did you make any inquiry as to that?
A. No, sir, I did not.
Q. When you bought the land you made no inquiry as to that, as to the purposes for which it had been used?
A. No, sir.
Q. How long prior to the time you bought this land had you known it, been familiar with it?
A. Why practically—I didn't know that land any more than any other along the line; I have been familiar with this land in
2710 this county for the last 25 years or 30.
Q. You have known this land 25 years?
A. I have known of the location of it.
Q. Did you inspect the land before you bought it, look it over?
A. Yes, sir.

Q. What was on it then?

A. Nothing, same as it is now.

Q. Now Mr. Broderick, when you bought that land, did you know that it was land designated upon the government plat as swamp or marsh land?

A. No, sir; I don't know it yet.

Q. Did you examine the government plat to see whether that is true?

A. I certainly did.

Q. And you found that it was not designated as marsh land?

A. To the best of my knowledge; I am talking about the land, I don't know anything about the plat.

Q. I call your attention to Defendant's Exhibit 108, being a certified copy of the government plat and survey of this land, and particularly the southeast quarter of section 16; is that the land that you say you own and have spoken of here?

A. Southeast quarter of 16, 129, 47, and the west half of the northeast quarter of the same section.

Q. Now, Mr. Broderick, you will observe from the government plat here, do you not, that all of that southeast quarter of 16 is designated upon that plat as marsh land?

Mr. Bronson: That is objected to as asking the witness what a map contains.

2711 Mr. Palmer:

Q. Did you know that at the time you bought the land?

A. I didn't know anything about the government plat, I bought the land on my own judgment.

Q. I call your attention to the west half of the northeast quarter of 16 and you will observe that more than half of that eighty is designated as marsh land upon the government plat. Did you know that at the time you bought it?

A. No, sir, I didn't look at the government plat at all when I bought the land.

Q. Did you make any inquiry of any one before you bought this land as to whether it was overflow land?

A. No, sir, I did not.

Q. Mr. Broderick there is a western outlet or arm of Traverse Lake that comes right up across your land and flows on over into the Bois de Sioux river, is there not?

A. There is a draw through there, yes, sir.

Q. And a bridge across it?

A. No, sir, not on me.

Q. How much of a draw is that?

A. It is a very little draw.

Q. There is a bridge at the southwest corner of your quarter section, isn't there a 60 foot bridge?

A. Yes, sir, there is.

Q. And that is across that draw, isn't it?

A. Yes, sir, it is across that draw but not on me. The bridge isn't even on me, it just comes to the line.

Q. That draw goes on across your land?

A. Yes, sir, there is a light draw there.

Q. And the water that flooded this land in 1915 and 1916 came up that western arm of the outlet of Lake Traverse?

2712 A. I couldn't swear to that where it came from.

Q. I take it that that bridge is there for the purpose of carrying the water, or allowing the water to pass through to the northeastward?

A. I presume so, or else across the coulie.

Q. Did you observe the land at all before you purchased it as to whether water came up and flowed across your land from the south?

A. I looked the land all over carefully before I purchased it, yes, sir.

Q. And you noticed that draw?

A. A light draw on me, yes sir.

Q. And saw that bridge down there?

A. I certainly did, I crossed it lots of times.

Q. Did you have any one take the elevation of this land to see how high it was above the Bois de Sioux river?

A. No, sir.

Q. How much of a bank has the Bois de Sioux river on the west right easterly of your land there, any perceptible banks?

A. There is a bridge across there, I haven't paid much attention to that either, that is off of me too.

Q. The Bois de Sioux river has very poorly defined banks at that point easterly of your land?

A. There isn't a very steep bank, no, sir.

Q. You say this is wild grass upon this land?

A. No, I say it is prairie grass and allow me to state that I seeded timothy, red top and blue grass in with it.

Q. Where?

A. On the whole tract.

Q. You have simply sown that grass seed upon the top of the ground?

2713 A. I think it was in 1911, if I ain't mistaken.

Q. That was an extremely dry year, wasn't it?

A. I wouldn't swear to that.

Q. What is your recollection about it?

A. Ordinary season, I think if I ain't mistaken.

Q. And did you simply sow this grass seed on top of the ground?

A. Yes, sir, broadcast it.

Q. You didn't cultivate the land at all?

A. No, sir.

Q. Now, Mr. Broderick, you think that that tame grass that you seeded in there was killed out by the waters?

A. No, I know it was.

Q. You think it would cost $1,200 to again seed the top of that ground with tame grass?

Mr. Pinkney: We object to that as he made no such statement, a misinterpretation of the statement of the witness.

A. I figured it would require that much to get the ground back in the shape it was before the flood, not to throw the seed on top.

Mr. Palmer:

Q. How much did the grass seed cost you that you put on it?
A. I should judge it was in the neighborhood between $65 and $70 *dollars.*

Redirect examination.

By Mr. Pinkney:

Q. And that involved also the labor of putting it in?
2714 A. No, sir, that was the expense of the grass seed.
Q. And the labor in addition to that?
A. And the labor in addition to that.
Q. You testified as to the damage to this land being $5 an acre. You didn't mean it would cost $5 an acre to sow the grass seed on top, did you?
A. No, sir.
Q. I understand you to say that these flood waters cleaned the pasture land entirely, hay land entirely, or killed the grass on it?
A. The hay crop was practically ruined.
Q. What kind of hay did you get off of this land, what quality of hay, what character and quality of hay did you get off of this land in the years you farmed it up to 1915?
A. I got hay that graded $2 prairie in the twin cities.
Q. What prices per ton did you get for that kind of hay as compared with timothy hay?
A. That hay ranged me, it ranges in the market all the was from $10.50 to $12.50.
Q. As a matter of fact, it sells in the markets, doesn't it practically at the same price as timothy does?
A. No, sir, your timothy hay costs more money.
Q. How much more?
A. Generally practically a dollar or two or so.
Q. Difference?
A. Yes, sir.
Q. Mr. Palmer has asked you about this government plat and what it shows. Did you know anything about a government plat when you bought this land?
A. No, sir, I did not.
2715 Q. Tell the Court, as a matter of truth, whether or not this 240 acres of land of yours is marsh land or ever has been since you have owned it as far as you know?
A. Best of my judgment it is not.
Q. You know what marsh lands are?
A. Yes, sir.

Q. Are these marsh lands?
A. No, sir.
Q. Since you have known it, up to 1915, tell the Court whether, since you have owned it, you harvested your crop of hay, on your land every year?
A. I did.
Q. Did you ever see the kind of hay you raised on that land grow on marsh land?
A. No, sir.
Q. Does it ever grow on marsh land?
A. No, sir, not my judgment, of hay.
Q. You know where it grows, don't you?
A. No, I never seen the kind of hay I raised grown on marsh lands.
Q. When you bought this land it was what is known as virgin soil, with the original prairie hay on it?
A. Yes, sir, it is yet.
Q. Has it got the hay on it yet?
A. No, I mean the soil itself.
Q. Is it the original virgin soil?
A. What I mean is, it was never cultivated to my knowledge.
Q. You used it always since you have owned it for cutting the hay and selling it?
A. Yes, sir.
2716 Q. It could be cultivated and crops raised on it?
A. Yes, sir, I should think so.

Mr. Bronson:

Q. When you spoke about your computation in this matter, I will ask you to state whether or not you expect the state of North Dakota in its sovereign capacity to protect you in your property rights within the state?
A. Yes, sir.
Q. And you have stated your damages fairly as you think them to be?
A. I have.
Q. And you expect to be reimbursed such as the law may determine you are entitled to be reimbursed?
A. That is what I am figuring on, yes, sir.

Recross-examination.

By Mr. Palmer:

Q. What do you think the grass seed will cost you to again sow the top of that ground, Mr. Broderick?
A. Well, sir, I would have to figure.
Q. You say it cost $65 before?
A. Not to cover the whole ground. I put that on it and it eventually seeded itself.
Q. It might do the same again?

A. It might if I had it seeded.

Q. You adhere to your opinion to sow the top of that ground to grass seed would cost $1,200?

A. No, sir.

Redirect examination.

By Mr. Pinkney:

2717 Q. You didn't state it would cost $1,200 to sow it?

A. No, sir, I say it would cost $5 an acre to get the ground back in the condition it was in before the flood.

At this time recess is taken until 9:15 o'clock A. M. November 13, 1917.

November 13, 1917, at 9:15 a. m.

(At this time the witness JOHN Q. BURBANK and the witness HENRY HOKANSON are sworn and testify in behalf of defendant. Recess is taken at noon and at 1:15 the hearing is resumed and the following proceedings were had.)

2718 H. W. BRIDEN, sworn in behalf of complainant, testified as follows:

Examined by Mr. Pinkney:

Q. State your name in full?

A. Henry William Briden.

Q. Where do you live?

A. Janesville, Iowa.

Q. How long have you lived there?

A. We moved there in 1854.

Q. Do you own any land in Fairmount Township, Richland County, North Dakota?

A. Yes, sir.

Q. What is the description of the land you own?

A. It is the east half of section 32, township 129, range 47.

Q. How long have you owned that land?

A. I bought that in 1912, I believe, fall of 1912.

Q. Have you farmed it yourself of have you rented it to a tenant?

A. Rented it to a tenant.

Q. Did you have it rented to a tenant for the years 1915 and 1916 and 1917?

A. Yes, sir.

Q. What were the terms of rental upon which it was rented for those years, what were you to get for it?

A. I was to get $500 cash, and he was to do some repairing.

Q. $500 cash for the three years or for each year?

A. For each year.

Q. He was to do what?

2719 A. To do some re*ap*iring, he built the barn there.

Mr. Palmer: Who built the barn?
A. Mr. Blackledge.

Mr. Pinkney:

Q. Did this tenant farm these lands the years 1915, 1916 and 1917?
A. No, sir.
Q. Why didn't he?
A. Drowned out.
Q. He was drowned out by what?
A. By the flood.
Q. What flood?
A. Well, I don't know what flood you call it. The water come down, they said it was ditched down onto us from Minnesota and come down there and flooded us; he had to move out.
Q. He had to move off the land?
A. Yes, sir.

Mr. Palmer:

Q. What you say is what somebody told you?
A. Yes, sir, I was there and seen the water.

Mr. Pinkney:

Q. Did you get any part of your rent money for 1915 and 1916 or 1917 out of this tenant?
A. No, sir, I did not.
Q. Then you lost the three years $500 each year?
A. Yes, sir, three years.
Q. You say he was drowned out?
A. Yes, sir.
Q. Tell the court about where the water got there in 1916, with relation to your buildings.
A. They got all around the buildings, so he said——
Q. Don't tell what he said, tell what you saw?
A. I didn't see it up around the buildings.
2720 Q. Did you see it at all in 1916?
A. Yes, sir.
Q. To what extent?
A. About 200 acres under water when I saw it.
Q. When did you see it in 1916?
A. In September.
Q. Had the water gone down then?
A. Yes, sir, quite a little.
Q. Did you see anything to indicate to you how high the water was that year?
A. Yes, sir.
Q. How high had they been with relation to your buildings judged from these signs you saw?

A. They had been around the buildings all under water around there.

Q. Isn't it true that your cellar under the house was filled with water that year?

A. Yes, sir, the cellar was filled with water.

Q. And the waters entirely surrounded the house and filled your celler with water, isn't that true?

A. Yes, sir.

Q. And was that true also as to your barn, it was up to your barn?

A. Yes, sir, it was up around the barn. Would you allow me to tell you I didn't see it around the barn but I saw the marks where it had been.

Q. You saw the marks on the barn?

A. I saw the marks up to the barn where it had been there and I asked Mr. Blackledge if that was the case and said it was.

2721 Q. As I understand you bought this land in 1912?

A. 1912, I believe, yes sir.

Q. Will you tell the court what you paid for it, per acre?

A. $40.00 per acre.

Q Did you pay cash for it or in what manner did you make the payment?

A. I paid part cash and part trade.

Q. How much cash did you pay?

A. There was a mortgage against it of $3,200. I lifted that and just the amount of cash that I paid I think was about $500, best of my knowledge, but I wouldn't dare say positively. I believe it was $500 and I lifted the mortgage.

Q. Now, you say you traded him some land?

A. Yes, sir.

Q. Where was the land located that you traded him?

A. It was in Illinois.

Q. Was the land worth in Illinois what you put it in for in your trade for this east half of section 32?

A. I never see the land but once. I was there once and the party took me, I says: "This land isn't very good." He says, "They sell it for $100 an acre" and I traded this farm for $75 and afterwards he told me that he sold it for $100.00.

Q. The man that you traded with?

A. The man I traded it to.

Q. How long afterwards?

A. I couldn't dare say about that, but I think it was inside of six months. I wouldn't say positively about that.

Mr. Palmer: Is this witness going to put in this record everything that everybody told him?

2722 Mr. Pinkney:

Q. I don't want anything like that, I don't want what somebody told you.

Mr. Palmer: You can't sit here and tell what people told you on the street and out on the farm.

The Witness: All right.
Mr. Palmer: State what you know.
The Witness: Yes, sir.

Mr. Pinkney:

Q. When you got this land, this east half of Section 32, what shape was the land in?
A. It hadn't been farmed that year and was weedy.
Q. What shape was it in? Was it a clean, well cultivated farm, broken up and plowed, or was it all hay land? Tell us about it?
A. It was. It had been plowed and grown up with weeds that year, it wasn't farmed that year.
Q. Wasn't farmed the year 1912?
A. No, sir.
Q. Do you know why?
A. No, I don't know really why.
Q. Tell us about how many acres had been cultivated on the land?
A. About 150 acres.
Q. And was that the amount of cultivated land that you had on the farm at the time you rented it to this man for the years 1915, 1916, and 1917?
A. Yes, it was about that.
Q. What was the balance of the half section in?
A. Pasture and hay land.

Q. What buildings were on the land when you bought it?
2723 A. There was a little small barn and a house and granary.
Q. Did you add anything to the house or granary?
A. I had the house repaired and painted and built the barn.
Q. That was the barn you said the tenant built?
A. Yes.
Q. When the tenant built this barn, did you mean by that the tenant furnished the labor and you furnished the materials, or what did you mean?
A. That is what I mean, he was to do all the labor and I was to furnish the material.
Q. What time in 1912 did you acquire it?
A. I bought it in the fall of 1912.
Q. Did you get possession of it in the year 1913?
A. I got possession, yes, in the fall.
Q. Fall of 1912?
A. Yes, sir.
Q. What crops did this land have on it in 1913?
A. Mr. Blackledge farmed it in 1913.
Q. I asked you what crops you raised on it in that year.
A. He raised some corn and barley and oats and wheat.
Q. Did you rent it to him in 1913, on the same terms that he had it——
A. No, I had it on share rent, he had it rented on share rent.
Q. For 1913 and 1914?
A. Yes, sir.

Q. It was on shares in 1913 and 1914?

A. No, just 1913 on shares.

2724 Q. And how was it rented in the year 1914?

A. It was rented for $500 and he was to build that barn.

Q. That was for 1914, 1915, 1916 and 1917?

A. Yes, sir.

Q. $500 for each year?

A. Yes, and do that repairing and build that barn and chicken house and some other repairing, built a pasture fence. I calculated he done $500 worth of work there.

Q. What kind of a farmer was Mr. Blackledge?

A. I call him a pretty good farmer.

Q. Good man to take care of things?

A. A good man to take care of things, yes, sir.

Q. Have you seen that land this summer and fall?

A. Yes, sir, I was there in September.

Q. Tell the court what shape it was in at that time.

A. It was in pretty bad shape, it was all growed up with weeds.

Q. Have you any cat-tails on it? Do you know what cat-tails are?

A. Yes, sir, there was cat-tails.

Q. To what extent was it covered with these?

A. The pasture—the land where it was flooded all drowned out and some cat-tails on it and moss and stuff.

Q. The pasture and hay land all drowned out?

A. Yes, sir, pasture and hay, mostly hay land.

Q. And covered with cat-tails?

A. Yes, sir.

Q. And other weeds on it?

A. Yes, sir, lots of weeds on it.

Q. I want to ask you, did you have it plowed this fall, sum-

2725 mer or fall?

A. I rented it. There was about 50 acres plowed.

Q. You rented it to somebody else and they plowed about 50 acres?

A. Yes, sir.

Q. That is, rented it to him for the year 1918, is that the idea?

A. Yes, sir.

Q. As I understood you, there was no crop whatever raised on it in the year 1917?

A. No, sir, no crop raised in 1917, of any description. I rented it to a man, I understood that the man plowed 50 acres in the summer.

Cross-examination.

By Mr. Palmer:

Q. Are you a resident and citizen of the State of Iowa?

A. Yes, sir.

Q. And have been such ever since 1854?

A. Practically.

Q. Have you ever been a citizen and resident of the State of North Dakota?

A. No, sir.

Q. Have you stated your damages here with the expectation of recovering them?

A. Well, I stated them with the idea that I thought I ought to have them.

Q. And whom do you think you ought to have them from?

A. Why, I thought probably that Minnesota was responsible for it. I thought they ditched down onto us and flooded us but I
2726 ain't too certain about that, I am sure.

Q. You have no personal knowledge of those matter-, Mr. Brinden?

A. Not really, no, sir.

Q. Have you contributed money towards the expense of maintaining this suit on the part of the State of North Dakota?

A. Yes, sir.

Q. And have you done so with the expectation and understanding that if damages are recovered by the State of North Dakota from the State of Minnesota that the State of North Dakota will pay you your damages?

A. Well, now, I ain't over clear on that. I thought that the attorneys would find out where the trouble was and where the damage should come from and I would get it wherever it ought to come from. I don't know whether it would be from Minnesota or Dakota, but I suppose it would come from Minnesota.

Q. To Dakota and from Dakota to you?

A. Come from Minnesota to me.

Q. Or come from Minnesota to you?

A. I thought so. I left that for the attorney to work out and find out where the trouble was, really.

Q. Do you understand that the counsel that are here representing the State of North Dakota are also representing you?

Mr. Bronson: That is objected to as improper cross-examination, the record speaks for itself as to the appearances made.

A. Why, I suppose in a way they are.

Mr. Palmer:

Q. They are representing you to the extent of your damages, are they not?

2727 Mr. Bronson: That is objected to as improper cross-examination, trying to read into the record an appearance which is provided for under the rules of this court.

A. Why I presume that is the way it is.

Mr. Palmer:

Q. When you bought this land in 1912 in the fall, did you examine the land?

A. I was over it.
Q. At that time it was dry?
A. Yes, sir.
Q. That was a dry fall, wasn't it, in this section?
A. I presume it was fairly dry.
Q. And did you make inquiry as to how long it had been since a crop had been raised upon it?
A. It had missed one crop, I understood.
Q. And that was the crop of 1912?
A. Yes, sir.
Q. 1912 in this section was a most excellent crop year, wasn't it, Mr. Briden?
A. Well, I don't know positively. I just merely was through here, I wouldn't wonder if it wasn't fairly good.
Q. Who at that time had this land?
A. I don't know as I can state his name hardly—Kentzelman.
Q. Did you buy it from Kentzleman?
A. I did.
Q. Do you know how long he had owned it?
A. No, I do not.
Q. Had he ever farmed it himself?
A. No I think not.
Q. Where did he live?
A. Waterloo, Iowa.
2728 Q. And he had been renting the land out as a tenant farm?
A. Yes, sir. Well, I don't know, maybe he only had it one year, maybe he never had a tenant on it. He had a man living in the house but maybe he didn't farm the land. He had a garden there, things looked nice in the garden, the land wasn't farmed any more than the garden.
Q. Did you make inquiry as to who had it before Kentzleman got it?
A. No, I don't really know who had it, I am sure.
Q. Do you know how long it had been since any owner had lived upon it?
A. No.
Q. You didn't inquire how long it had been a tenant farm?
A. No, sir, I did not.
Q. Did you inquire as to when it had been patented from the government?
A. No, I didn't make any inquiries about that.
Q. Did you get an abstract of title?
A. Yes, sir.
Q. Showing that the land had not been patented until about the year 1896?
A. Well, I ain't sure about that. It probably is that way, I don't know. I got an abstract, I didn't get the abstract right away.
Q. And between the time that it had been patented and the time you got it there had been something like twelve transfers of it; hadn't there?
A. Might be, I wouldn't dare say.

2729 Q. Do you know whether it had been traded around from one person to another?

A. I didn't make any inquiries about that. I don't know it might have been.

Q. That might have been a good way to ascertain the character and value of the land might it not?

A. It might possibly, yes.

Q. Had you no interest in ascertaining the character and value of the lands that you were buying?

A. Well, of course I ought to have some interest in it but I thought that it growed such good weeds it would grow other stuff. It had a big growth of hay on it. I know when they was putting up the hay next year they could hardly get the hay rake up in time to dump a windrow. Had a big crop of hay the next year I had it. I thought I was judge enough to know without——

Q. Did you make any inquiry as to whether it was subject to overflow from Lake Traverse?

A. I did, a little.

Q. What did you ascertain?

A. The most of them seemed to say it had overflowed for quite a number of years and didn't think it ever would again.

Q. And since these floods of 1915 and 1916 those same people have expressed the opinion that it is going to overflow every year, haven't they?

A. I haven't heard such talk, it may be.

Q. You haven't heard that?

A. No, sir.

Q. But at the time you bought the land they seemed to be of the opinion that it wouldn't overflow again?

A. That seemed to be the general opinion. The man
2729½ that went on there, Mr. Blackledge, lived around there for several years and he said he wasn't afraid of it and he said they raised good crops there. He said he knew it was good land and he said for years he had been anxious to get on that half section.

Q. He paid you about $1.60 an acre rent?

A. He did, it was a very little but he done a lot of improvements to start with. He built that barn and done all that work, drawed the gravel and cement put the foundation in, built the barn, painted it and then he was to have it for $500 a year.

Q. For four years?

A. Yes, sir.

Q. For four years he was to have it for $500 a year?

A. Yes, sir.

Q. $1.60 an acre?

A. Yes, sir.

Q. Did you make inquiry to find out what the actual cash rent of the lands in this neighborhood was?

A. Well, I did some but then I wasn't so particular if I would get a man that would take good care of it and improve it. He was to put some shrubbery there, he was to put in some willows and make some groves there and he planted a lot of soft maple seeds there and he was to do such work as that and he was to have it for a low

rent. I wasn't so particular to have a large rent if I got a man that suited me and took care of it.

Q. And put in some willows?

A. Get a grove around there.

Q. Didn't it ever have any grove on it?

A. Not any to speak of, it had a few trees.

Q. Didn't it have any shrubbery on it?

A. No, sir.

2730 Q. Any orchard?

A. No, sir.

Q. Small fruit, or anything of that kind?

A. No. The house had been moved there only a few years. It was on the other half section and hadn't got it started yet.

Q. The house had been there only a few years?

A. Only down there a few years, yes, sir.

Q. And the barn wasn't there at all yet?

A. There was a little barn there and a little granary.

Q. How much of a barn?

A. Well, I guess the barn was just maybe only about 12 feet wide and 32 long, something like that.

Q. Wasn't much of a barn for running a half section?

A. It wasn't much of a barn, just to put a few horses in.

Q. It wasn't much of a granary for a half section farm?

A. No, sir.

Q. Wasn't much of a house for a half section farm?

A. There was quite a house there. They was just starting that place, that house had been moved over from the other half section and it was just starting there.

Q. Did you think that that farm in a community which had been settled for upwards of 30 or 35 years, a half section with buildings just being put onto it and no grove, no shrubbery and only 150 acres plowed on the half section and that gone back to weeds was a good farm?

A. Well, it looked good to me, it looked as though it would make a good farm.

2731 Q. It looked as though it would make a good farm. You didn't think it was a good farm, then?

A. All it wanted was just plowing and cultivating and taking care of it, same as any land would. That is the way it looked to me.

Q. How far is it from White Rock?

A. Two miles.

Q. Two miles from town?

A. Yes sir.

Q. And in that condition?

A. Yes, sir. I ain't responsible for it being in that condition.

Q. But you were responsible for buying it weren't you?

A. Yes, sir, and I will stand it too.

Q. Did you make one bargain with this tenant to take that land for four years at a rental of $500 a year and the repairing, was that an entire contract?

A. Well, I rented it first year for grain rent.

Q. What year was that, 1913?
A. Yes, sir.
Q. What did you get out of it that year?
A. I really forget, I am a little careless about taking care of those things. He drawed the grain and I put the money in my pocket and used it and I couldn't tell.
Q. You took what he gave you and forgot it?
A. You can call it anyway you mind to, just as you mind to about that.
Q. Call it the way it was, tell me the truth about it.
A. If I could remember, I would tell you as soon as not I can't remember.
2732 Q. You forgot it?
A. I sold the corn.
Q. How much?
A. $100.00.
Q. How many acres did he have?
A. I guess he had maybe 20 acres.
Q. Maybe 20 acres of corn?
A. 20 acres.
Q. Didn't he have more than 20 acres of corn on a half section of land?
A. He had 80 acres of pasture and 90 acres of meadow land and the rest of it was in small grain. I think it was only about 20 acres, I wouldn't say positively.
Q. 1913, was a very good corn year, wasn't it?
A. It was just middling.
Q. Good grain year?
A. Well, it didn't prove to be overly good on that farm because it was all weeds when he went there and he had to get it under cultivation.
Q. I notice that the south line of this east half of section 32 there appears to be a ravine coming up through there. Did you see that when you bought it?
A. No, the draw is on the west and then it runs across into the other section, but on the south line it is in the west.
Q. And then runs right across your land?
A. Runs across, kind of.
Q. Did you examine the government plat to see whether a large portion of the east half of 33 was marked marsh or swamp land?
A. No, I did not.
2733 Q. Let me call your attention to this government plat here, Defendant's exhibit 108. I will ask you to tell me if that represents correctly the location and size of the draw across your land, marked low wet slough or west outlet of Lake Traverse?

Mr. Bronson: Objected to as improper cross-examination, and upon the ground the map shows for itself and the witness does not pretend to be an expert and doesn't know anything about the map, never examined it before.

A. That don't look to me to be quite right but it is very near. It don't look to me to be quite right, it looks as though it ought to come a little more——

Mr. Palmer:

Q. Westerly?

A. I think so, I don't know, and then come up like that.

Q. You knew when you bought that land there was one of the outlets of Traverse Lake that ran up across it and when over in to the Bois de Sioux river?

A. I didn't make any inquiry, I didn't really know when I bought it.

Q. Didn't care whether it had water running across it or not, overflow from the lake?

A. Well, I went by what the neighbors told me a good deal. They didn't believe it would ever be disturbed any more and it looked like good, rich land to me and I thought I would risk it. Of course, if I had known this was coming onto it, I wouldn't have wanted the land but as much as I could inquire around they seemed to think that land would be all right.

Q. You say, Mr. Briden, that you figured this land at $40.00 and acre?

A. Yes, sir.

2734 Q. That would be $12,800. You paid $500 in cash as near as you can recollect?

A. Yes, sir.

Q. And then you assumed a mortgage of $3,200?

A. Yes, sir.

Q. Do you know how long that mortgage had been on there?

A. Why, I think it had been given for five years and it had to run two more, something like that, as near as I can remember.

Q. Did Kentzleman put it on there?

A. Now, I wouldn't dare tell you that.

Q. Who held that mortgage?

A. Some party in Minneapolis.

Q. Wasn't anybody living around this land?

A. No, sir.

Q. Did you inquire for what purpose the mortgage had been put on there?

A. I did not.

Q. That would leave $9,100?

A. Yes, sir.

Q. Balance, and you say you traded in some land in Illinois?

A. Yes, sir.

Q. How many acres?

A. 100 acres.

Q. 100 acres, at how much an acre?

A. $75.00.

Q. That would make only $7,500?

A. Maybe I paid more cash. I told you I didn't know for sure, that was what we figured it at.

2735 Q. Did you have a mortgage on that land in Illinois?
A. No.
Q. How long had you owned that?
A. You got me there, I don't know exactly.
Q. About how long?
A. Well, I guess about a year.
Q. What had you been doing with it since you got it?
A. It was idle land.
Q. That was idle land too?
A. Yes, sir.
Q. Didn't have any crop on it in 1912?
A. Didn't have no crop on it; there was some timber on it. Near Kankakee, I couldn't think of the place.
Q. Hadn't it ever been plowed up or cultivated?
A. There had been a little, most of it small timber.
Q. Wasn't any building on it?
A. No, sir.
Q. Any fences?
A. None to speak of. I think there had been a little fencing on it, I never was there but once and seen it.
Q. What did you pay for that?
A. You got me again. I took a mortgage on that and foreclosed the mortgage but just what it amounted to, I don't know.
Q. Couldn't the fellow that was on there pay the mortgage?
A. Well, he didn't, that is all I know.
Q. Did he live on the land?
A. No.
Q. Didn't anybody live on it?
A. No, sir.
2736 Q. You recollect how much the mortgage was in the first place?
A. No, I do not. I am one of these careless fellows.
Q. You appear to be.
A. Yes, sir, I will admit it.
Q. Didn't you know, at the time you traded this land off this land in Illinois, anything about how much it had cost you?
A. Well, I suppose I might if I stopped to figure it up.
Q. Well, about how much—don't you know how much money you put into it?
A. No, I dasn't tell you, I don't know, that is the truth of it.
Q. You forgot that as quick as you could.
A. Yes, sir, I wanted to forget it, if you mind to put it that way.
Q. I want you to tell me about it.

Mr. Bronson: We object to this line of inquiry.

A. Why have I got to tell you about it, I would like to know.

Mr. Palmer:

Q. Just a sort of morbid curiosity on my part.
A. All right then, go ahead. I got the land and I got it hon-

estly and I sold it honestly. I told you I went and looked at the land there, and there was land right by it that sold for $100 an acre. I told the man he could have it for $75 and he hadn't had it a great while and he told me he sold it for $100.

Q. Now, when you first saw this land in Illinois, the first thing you said to the fellow that was with you was, you said: "This don't look to me like very good land"?

A. That is what I said.

2737 Q. Have you got this land on the market?

A. No, sir, I never offered it for sale at all.

Q. You say you have rented it for 1918?

A. Yes, sir.

Q. On what terms?

A. Why, I think he was to give me, I can get the——

Q. Just tell me generally.

A. I might tell it wrong. I can get the lease if you want to see it.

Q. No, I know you are a careless fellow, but tell us as near as you can.

Mr. Bronson: I object to that as not the best evidence.

Q. Have you got the lease here?

A. I have got the lease here.

Mr. Bronson: We will object to a statement as to the terms as the lease is the best evirence and is now in Court.

Mr. Palmer: Have you got the lease with you?

A. No, I have it at the hotel.

Q. Can you tell us generally what you will get?

A. I will try it.

Q. Try it then.

A. They hay land, he was to give me, I think, a third in the stack, and the small grain he was to give me a third, if I remember right, delivered at the elevator, and the corn and potatoes he was to give me $2 an acre. I can get the lease and show you.

Q. Isn't that substantially the same terms that you had it rented to Blackledge on in 1913?

Mr. Pinkney: We object to that, he has already answered that question.

A. No, it ain't the same terms. Not by quite a good deal,

2738 it varies in a good many ways. Blackledge didn't pay me no cash rent and I think he gave me a little more, he gave me a third at the depot, if I remember right.

Q. There is no great difference between a third and a third?

A. Not a big difference, no, sir. And the hay, he gave me a lot of hay but I don't know whether it was half or not. It seems to me he gave me half of the hay that year.

Redirect examination.

By Mr. Bronson:

Q. Where is Mr. Blackledge now?
A. He moved south of town; I don't know where he is now.
Q. What town?
A. He is at Dumont, on a farm.
Q. North Dakota?
A. Well, let's see, is that North Dakota? No, it is Minnesota.
Q. In 1915, where you up here?
A. Yes, sir.
Q. Blackledge on the farm then?
A. Yes, sir, Blackledge was on the farm in 1915.
Q. When did he move off?
A. He moved off in the spring of 1916.
Q. Was any crop produced on that land in 1915?
A. Very little.
Q. How much?
A. Well, sir, you got me again, I don't know how much; there was very little.

2739 Q. How much was flooded in 1915, generally speaking?
A. Well, Oh, I wouldn't dare say, hardly. There was a good deal of it under water, I hardly know. There was probably two hundred acres under at one time, probably. Now, I don't know for sure whether I am telling you right or not.
Q. Was the crop on that two hundred acres destroyed that year, 1915?
A. Well, the most of it was destroyed, it wasn't all of it.
Q. You say in 1915, there was about two hundred acres under water?
A. I think so.
Q. That is your opinion, as to the number of acres?
A. Yes, sir.
Q. Was that land——
A. But there was land so wet you couldn't work it.
Q. I am asking you if the crop that was on these two hundred acres, such crop as there was, whether it was hay or cereal crops, whether it was destroyed so they couldn't cut it in 1915?
A. Most of it.
Q. And 1916, no crop was raised on there?
A. No crop.
Q. And none in 1917?
A. No, sir.
Q. So if I understand you, you haven't received any rent for the year 1915?
A. No, sir.
Q. None for 1916?
A. No, sir.

2740 Q. None from 1917?

A. No, sir.
Q. Who is your tenant now?
A. He is a bachelor, I don't know him.
Q. Don't you know his name?
A. I can't speak his name; if you got to have it I can soon get it.

Mr. Bronson: Will you get that, Mr. Briden and that lease?

2741 EDWARD N. NELSON, sworn in behalf of complainant, testified as follows.

Examined by Mr. Pinkney:

Q. Where do you live, Senator?
A. About five miles north of here.
Q. In Fairmount township?
A. Yes, sir.
Q. Do you own any land in Fairmount township, North Dakota?
A. No, I am working some, I have been working some.
Q. Describe it please, Senator?
A. The description is section 3, I believe, 130-47.
Q. What part of it do you work?
A. Northwest quarter and two fractions.
Q. In section 3?
A. Yes, sir.
Q. Is the description the Martin and Anton Bibo land, west half of the northwest quarter and the west half of the northeast quarter and lots 3 and 4, section three, township 130, 47?
A. Yes, sir.
Q. How long have you been working those lands, Senator?
A. Ten years or more, I guess. I believe since 1906.
Q. Do you rent them?
A. Yes, sir.
Q. On what terms?
A. I furnish everything, deliver one third in the elevator free of charge.
Q. Then you get two thirds of the crop proceeds?
A. Yes, sir.
2742 Q. Were these land- affected in any way by the flood waters that occurred here in the years 1915, 1916 and 1917?
A. 1916.
Q. In the year 1916?
A. Yes, sir.
Q. How much of this acreage of this tract of land was affected by the water?
A. Practically all under water, there was fifteen acres of it that wasn't plowed.
Q. You say it was all affected by the flood waters in 1916?
A. Yes, sir.
Q. And there are——
A. There is over two hundred acres.
Q. Two hundred and twenty-seven acres?

A. Yes, sir, but there was a part that wasn't plowed that the water went over.

Q. What I would like to get at is the total number of acres affected by the flood waters of 1916?

A. All of it.

Q. What crops, if any, did you have on these lands in the year 1916?

A. Didn't have any.

Q. Why not?

A. So wet we couldn't work it.

Q. What was the rental value of these lands to you in the year 1916 that you were prevented from working by reason of these flooded conditions in that year?

Mr. Palmer: That is objected to as not the proper measure of damages.

2743 Mr. Pinkney:

Q. Have you computed what the rental value would be to you for that year, have you figured it up?

Mr. Palmer: We object to what it would be to him.

Mr. Pinkney:

Q. What was the rental value of the lands?

A. Figured on an average of what other wheat went——

Q. Just say what it is and give us the figures, Senator, not rental value for the year 1916.

Mr. Palmer: Objected to as not the proper measure of damages.

A. Some $700 net.

Mr. Pinkney: $700 exactly, is it, you stated some $700, give us the exact figures?

A. No, $740.

Q. Now, would that be the net rental value of these lands for the year 1916 after deducting all expenses of producing and marketing the crops there for that year or, in other words, have you deducted all such expense in arriving at the net rental value for that year?

A. Figuring on the average of——

Q. Listen to the question, you can answer it without much trouble.

A. It would if I could have worked it.

Q. I am not asking you anything as to whether or not—have you computed the net rental value—were those lands cultivated and cropped in the year 1917?

A. No, couldn't plow it.

Q. Now, have you computed the net rental value of those lands for the year 1917, if they could have been cropped and you would have cropped them?

A. Yes.

2744 Q. Will you give what that rental value was for 1917?
A. That is, if I could have worked it.
Q. Yes.
A. $1,000.
Q. $1,000 even?
A. Oh, $1,075, around there.
Q. Now, the reason you couldn't work those lands, as I understand you in the years of 1916 and 1917, was because of these flood waters we had here those years, is that true?
A. Yes, sir.
Q. Senator, I wish you would tell the Court how much of that tract of land up there is under cultivation or was under cultivation in the year 1914, what proportion of the whole tract?
A. All except about 15 or at the highest 20 acres.
Q. And what were the 20 acres used for?
A. Oh, it was a strip along the river.
Q. What was it used for; did you get any use of it whatever?
A. Oh, it was weedy a little and had not been broken up.
Q. Did it produce a hay crop, Senator, that is what I'm trying to get at each year?
A. No, not very good.
Q. Then there was about two hundred acres or more that was under cultivation of the entire tract, is that right?
A. Yes, sir, there was 130 acres on the lower tract and 80 on the upper part.
Q. Making in all, what; 210 acres?
A. Yes, that was all plowed all under cultivation.
Q. What kind of land in a general way is that tract?
A. Good land.
2745 A. *Good land.*
Q. And of the same general character as the balance of this land along there, these overflowed lands in 1916?
A. I consider it better.
Q. It is of the same soil, isn't it?
A. Yes, sir, the river bank is higher.
Q. That don't make the soil any better, does it? What kind of crops have you raised on it, Senator, during the ten or more years that you have cultivated it.
A. Good average crop.
Q. I mean what kind of crops?
A. All kinds, wheat, barley, oats, flax.
Q. Corn?
A. Yes, sir, we had corn, too.
Q. And to what extent have you been able to produce crops from year to year on this land during the time you have worked it, how regularly?
A. Every year.
Q. You didn't produce any wheat in the years 1916 and 1917?
A. Yes, sir, except those years.
Q. Senator, how long have you lived in this community?
A. I have lived here, it will be 40 years next spring.

Q. And whereabouts have you lived during those years?
A. In this same place.
Q. During those years have you formed a general knowledge of the lands that were flooded in the years 1915, and 1916 and 1917 in this township, Fairmount township?
A. I think I have.
Q. Have you seen them frequently from year to year practically all the time you have lived here at different times?
2746 A. Yes, sir.
Q. Are you able to tell the court now to what extent since these lands have been occupied and broken up crops have been produced on them since you have know- them up to the year 1915?

Mr. Palmer: What lands?

Mr. Pinkney:

Q. These lands included within the flooded area in 1915 and 1916, which he stated he was familiar with?
A. Is that supposed to cover the whole district?
Q. Yes, sir, in North Dakota, the North Dakota line on the south up as far as the lands were flooded in 1915 and 1916.
A. In a general way crops has always been good when I seen them.
Q. Have they produced on them crops from year to year during the time you have known *to* lands after they became settled?
A. I have not been over it every year and every year I have been over it there has always been good fair crops.
Q. Was there anything to prevent there being good crops produced on them the years you wasn't over them, so far as you know?
A. No, sir.
Q. Would you say, Senator, that ever since you have known the lands, the past thirty years or more, that they have produced crops from year to year during all those years; that is to say, if they were cropped and broken up?
A. I believe all except 1915, 1916 and 1917.
Q. Do you occupy any official position in this State?
A. At this time?
Q. Yes, sir.
A. State senator.
2747 Q. From this County?
A. Yes, sir, Richland county.
Q. How long have you occupied such position?
A. Four years senator, two years representative.
Q. You were two years in the lower house before you went to the senate?
A. Yes, sir.
Q. Do you own any land yourself in Richland county, in Fairmount township?
A. Not in Fairmount township.
Q. Do you own any lands in Richland county?
A. Yes, sir, a half section.

Q. Will you tell us what those lands are that you own in Richland county?

A. Summit township, a mile north of Fairmount township.

Q. What township are you in?

A. Summit.

Q. You own the south half——

A. Southwest quarter of 28 and the southeast of 29, Township 31 Range 47.

Q. That is immediately adjoin-g the township of Fairmount?

A. Yes, sir, a mile from the line.

Q. And has that been your home Senator, on the premises that you own substantially all the time since you came to the State of North Dakota?

A. Yes, sir.

Q. What is your market town, Fairmount or Wahpeton?

A. Both places, mostly Fairmount.

2748 Mr. Bronson: How many years did you say you had farmed these lands in Section 3?

A. Ten years, at least.

Q. And during each of those ten years up to the year 1916 had you raised each year crops and harvested the same?

A. I did.

Q. Had you ever d*ru*ing that period of time that you had——

A. I might say that part of it was in hay land that I broke up again, that is timothy and hay, but I cut it and worked it just the same.

Q. Had you ever seen flood conditions of that kind exist upon that land that you did see exist in the year 1916 prior to that time?

A. In the time I worked it?

Q. Yes.

A. No, sir.

Cross-examination.

By Mr. Palmer:

Q. You know where the Rabbit River comes in to the Bois de Sioux river?

A. I do.

Q. That is about one mile south of your home?

A. Yes, sir; half a mile, nearly a mile, yes sir.

Q. And it is between this land in section 3 of Town 130 and your home place?

A. Yes, sir.

Q. In 1915, senator, these lands in section 3 were not flooded?

A. No.

2749 Q. Did you observe any unusual amount of water upon them in 1915?

A. I did in the river that fall.

Q. In the fall of 1915?
A. Yes, sir.
Q. That was the first time you had observed any exceptional amount of water in the river was the fall of 1915, was it, at that point?
A. Unless we go back 15 or 20 years before that.
Q. Well, I mean of these recent years.
A. Yes, sir.
Q. Now, in the fall of 1915 did you observe also an exceptional quantity of water in the Rabbit River?
A. Well, I don't know as I noticed it.
Q. Did you in 1916?
A. I did in the spring.
Q. In the spring of 1916 the Rabbit river was higher than you had seen it before in recent years, was it?
A. Yes, in recent years.
Q. Did you know about a considerable amount of ditching operations that had been carried on into the Rabbit river over in Minnesota?

Mr. Pinkney: We object to that as not cross-examination.

A. No, I don't; I didn't know there was any.

Mr. Palmer:

Q. What time in the spring of 1916 did you observe this unusual amount of water in the Rabbit river?
A. When the snow went off like every spring.
Q. At the time of the spring break-up?
A. Yes, sir.
2750 Q. Now, at the time that you observed the unusual amount of water in the Rabbit river, did you also observe an unusual amount of water in the Bois de Sioux river?
A. I certainly did.
Q. And was there any overflow of the Bois de Sioux river onto the lands northerly of the confluence of the Rabbit river?
A. Some.
Q. Where?
A. On section 34 and section 27.
Q. Section 34 of what township?
A. 131, 47.
Q. That is where the Rabbit river comes in to the Bois de Sioux, isn't it?
A. It does on the south side.
Q. On the south side of 34?
A. Yes, sir, within 40 rods of the line.
Q. About 40 rods north the line?
A. Yes, sir.
Q. Wh-t lands were flooded northerly of that point?
A. Well, 34, on the Dakota side and 27, adjoining.
Q. How much land in section 34 was flooded?

A. Well, it might be up to 30 to 40 acres.
Q. Whose land is that?
A. Frank Bowl and Albert Scriber.
Q. Was that land that lay immediately adjacent to the river bank?
A. No, I think the bank was dry.
Q. The bank was dry?
A. Yes, sir, nearly so.
Q. Well, it was land then?
A. The bank is higher than the land and back from it there.
2751 Q. The bank is higher than the land back from it?
A. Yes.
Q. And some water stood in there between the river bank and the higher land to the west?
A. Yes, sir.
Q. You think that in 34 there was some 30 or 40 acres covered?
A. Well, yes, in the whole of 34 on the two quarters.
Q. Was that all in one piece of water?
A. Yes, sir.
Q. And extended along about the same direction of the general direction of the river?
A. The same direction, yes, that is, it went, north.
Q. Was it flowing water or standing water?
A. It was flowing.
Q. And that was flowing to the north also?
A. Yes, sir, flowed off from this very land I was working.
Q. That was water which flowed northerly from the land in Section 3?
A. Yes, sir.
Q. Without going back into the river again?
A. Yes, sir.
Q. Did the banks of the Bois de Sioux river north of the Rabbit river overflow that season?
A. The bank, as I told you, was higher, it can't very well get over. There might be places where there was draws that it run in but not generally.
Q. But so far as you know then, the banks of the Bois de Sioux proper did not overflow north of the Rabbit river?
2752 A. No, not except in draws, as I say. There is places draws and coulées run in but otherwise the bank did not.
Q. The overflow then of the banks of the river seem to be confined to the parts southerly of the Rabbit river?
A. In the bank of the river?
Q. Yes.
A. Yes, sir.
Q. When you noticed in the fall of 1915, senator, an exceptional amount of water in the Bois de Sioux river——
A. I was plowing with a steam engine. I could take water from the high banks, something I never could before.
Q. When you noticed the exceptional amount of water in the

Bois de Sioux river in the fall of 1915, it didn't at that time overflow this land in section 3 at all?

A. No, sir, it kept within its banks, the bank was higher there.

Q. And it didn't overflow onto Section 3 until the break-up in the spring?

A. No, sir.

Q. And it was at that time that the Rabbit river was full and coming in?

A. Yes, sir.

Q. You state that you have known this land for about 39 years, senator?

A. I have, that is, in a general way, I don't claim every foot of it.

Q. Well, particularly the land in Section 3 which you have worked.

A. Yes, sir.

Q. I understand you to say that you have been working it for the past ten years, at least?

2753 A. Yes, sir.

Q. Were you quite familiar with the land in Section 3 before you worked it?

A. Yes, sir.

Q. Now, had you known of its being overflowed before 1916?

A. Once or twice in the spring, but never in the summer.

Q. What years, as nearly as you can give them, had it overflowed before onto the land in section 3?

A. First time in 1881.

Q. Was the overflow at that time more extensive, more or less extensive than in 1916?

A. Well, it was—there was just as much but it didn't last as long, not near as long.

Q. The spring of 1881 was an extremely wet spring wasn't it?

A. Extremely deep snow.

Q. Through the winter?

A. Yes, sir.

Q. And that caused the extreme wet conditions in the spring?

A. Yes, sir.

Q. The wet conditions in the season of 1881 were not caused by summer rainfall?

A. No, sir.

Q. You didn't have the summer rainfall in 1881, that you had in 1916?

A. Not through the season, I don't think we did.

Q. So that the flood conditions of 1881 were confined to the spring of that year?

A. A few weeks, yes, sir.

2754 Q. At the time of the flood there in 1881 I take it that all of the streams were full?

A. In the spring?

Q. Yes, sir; that is true, isn't it?

A. Yes, sir.

Q. And the Rabbit river was high that spring also wasn't it?

A. Yes, sir.
Q. At the time of the overflow onto this land?
A. Yes, sir.
Q. What other year do you recollect?
A. A little overflow in 1888, I think.
Q. What time in 1888?
A. Oh, just in the spring, a few——
Q. Was that caused by rainfall or by melting snows of that winter?
A. Melting snow.
Q. Did you have a great amount of rainfall through the summer of 1888?
A. Just ordinary.
Q. So that the flood conditions were confined again to the spring of that year?
A. That is all, just a week or so.
Q. Was this land in Section 3 then covered in 1888?
A. Not covered; might have been over the bank a little bit.
Q. Not as extensive as in 1881 or 1916?
A. No, sir.
Q. Was the time that the water overflowed upon this land in section 3 in the spring the same time that the Rabbit river
2755 was filled with water?
A. Yes, sir, about the same time.
Q. What other year do you recall?
A. Spring of 1897, 1896 or 1897, I think.
Q. That has been spoken of here as a spring of high water here, 1897; that is your recollection, is it?
A. Yes, sir.
Q. In the spring of 1897 was this land in Section 3 flooded?
A. There was some, it went over the banks a little, I think.
Q. And flooded those lands?
A. Not all of it, perhaps a portion along the river.
Q. Not as extensive as 1881 and 1916?
A. No, sir.
Q. Were the flood conditions in general as bad as they were in 1881 and 1916?
A. No, sir, 1881, was the heaviest of any.
Q. Were the flood conditions in 1897 caused by the melting snows of the winter previous or by spring rainfall?
A. Melting snow.
Q. Did you have any unusual rainfall through the season of 1897?
A. 1896, we had, not in 1897.
Q. 1896 you did but not in 1897?
A. Yes, sir.
Q. So that the floods of 1897 were confined to the spring?
A. Yes, sir.
Q. And at that time both the Bois de Sioux river and the
2756 Rabbit river were filled with water, weren't they?
A. For a week or so.

Q. And was it at the time when they were both filled with water that this overflow took place on section 3?
A. Yes.
Q. In 1896 you say you had heavy rainfall through the summer?
A. Yes, sir.
Q. Was this Rabbit river filled — water that summer?
A. Rabbit river from rain will only last a few days, it might be up a few days and only takes a few days to empty it.
Q. But when it fills with water from the spring freshets it lasts longer?
A. Yes, sir, about a week, sometimes longer.
Q. Was that in 1896 the Rabbit wasn't up a great while?
A. No.
Q. And in 1916 it was filled nearly the full season wasn't it?
A. No, sir.
Q. What part of the season?
A. Oh no, that don't last long, perhaps a month or so.
Q. Did you observe it particularly in 1916?
A. Oh, I would see the—I can tell by the river right below me.
Q. What can you tell by the river right below you?
A. The river below me is about the same height as the Rabbit is, the Bois de Sioux.
Q. Was the river right below you quite high during the season of 1916?
A. Yes, sir.
2757 Q. What other years did you recall of water upon these lands in section 3?
A. I don't recall any other season. Those are the four seasons that I remember anything about, and I think the only four seasons that we ever had overflows.
Q. May I call your attention to the years 1906 and 1907?
A. I just testified to 1907.
Q. You testified to 1897, Senator.
A. Oh, yes, that is right.
Q. I wish you would recall if you can, the years 1906 and 1907?
A. I don't think there was any spring freshet.
Q. Do you recall the summer flood?
A. I don't believe so.
Q. Did you observe any water upon these lands in section three during the summer of 1906 and 1907?
A. I don't know, I worked the land at that time and there was no water.
Q. There was no water?
A. No, sir.
Q. Now, in the year or season of 1896, do I understand you to say that you had a good deal of rainfall through the summer?
A. Yes, sir, had some big showers, I remember, that filled the pockets on our land up there but that wasn't affecting the river much.
Q. Did that affect the river to speak of?
A. It would last for a day or so, that was about all.
Q. It would be very slight?

2758 A. Yes, sir.

Q. Did it overflow that summer onto the land in section 3 to your recollection?

A. I think not.

Q. You were not working that land in 1896?

A. No, I do not think so.

Q. I say you were not working that land in 1896?

A. No, sir. First I think we worked it was in 1905, I believe was the first season.

Q. So the year 1916 seems to have been the only year that the flood conditions on section 3 stayed up pretty well through the season?

A. Yes, sir.

Q. And that summer you say the whole river, the whole Bois de Sioux river, was high at your place?

A. Yes, sir.

Q. You- home place?

A. Yes, sir.

Q. You didn't go over to investigate the ditching operations into the Rabbit river in Minnesota, you say?

A. I didn't know there was any at that point, there is further north.

Q. They were further north, you say?

A. Two or three miles further north there is some state ditches but not in there.

Q. Those are into the Rabbit river?

A. No, sir. Empties in three miles north of the Rabbit river.

Q. Into the Bois de Sioux river?

A. Yes, sir.

2759 Q. About three miles north of there?

A. Just about.

Q. And while you are speaking of that, do you know anything about the overflow of the Bois de Sioux into the Wild Rice River up toward the northern part of your township?

Mr. Pinkney: We object to all this as not cross-examination.

A. Two spring floods where it went over a little, there might have been three. In 1881, anyway.

Mr. Palmer: Was it 1881 and 1897?

A. Yes, sir, I rather think so.

Q. And 1916?

A. Yes, sir.

Q. And 1888?

A. No, I don't think it went across, not that I remember but that is only filling a coulie that is not really a general flood.

Q. But it overflows, the Bois de Sioux river overflows up there on section 9 in your township of Summit into that coulie on section 8 and then the water runs northwesterly into the Wild Rice River?

A. It runs over into a slough in 21, I think.

A. Then where does it go?

A. A big slough there, and it follows that ravine north.

Q. Where to, Senator?

A. And it empties into the Wild Rice, I think.

Q. In 1916, was this whole 230 acres in section 3 covered with water?

A. It was fur a month or so, I think.

2760 Q. In the spring?

A. Yes, sir, there might have been a little strip along the road that wasn't fully under water but while it was running in between the furrows it was under water.

Q. Then for a month or so,——

A. Then it was fully a month.

Q. What month was that, Senator?

A. It was the full month *of* from the break-up, I don't know just when it was, until the middle of May, probably longer.

Q. Then how much of it did it go down, how much of the land was then bare?

A. It settled there gradually until perhaps one hundred acres or so stood under for a long time.

Q. And the 100 acres that stood under for a considerable time was land adjacent to the river?

A. Yes, sir.

Q. How long did that 100 acres stay under water?

A. Well, prehaps until the first of June *of* so. It went back gradually a rod at a time.

Q. Did it finally get pretty well free from water?

A. Yes, sir, it got into the bank; the banks is quite high there.

Q. About what time did it get back into the banks?

A. I should say about the first of June, most of it. There might have been draws——

Q. First of June?

A. Yes, sir.

Q. Senator, if that water had receded within the banks of the river by the first of June, do I understand you to say that the land produced absolutely no crop that year?

2761 A. Yes, sir, that is what I said.

Q. Why didn't you put in a crop after the first of June?

A. The ground was so soft a horse couldn't walk on it.

Q. Now,——

A. We tried it and tried it. We did sow a little timothy on part of the upper side.

Q. Is that marshy land?

A. No, sir, that is good high land; but by being soaked with water it was soft all summer long.

Q. Have rain all summer long too, didn't you, senator?

A. It didn't rain in the spring because we put in our other crop, it rained when we got through seeding.

Q. And rained all summer practically?

A. Not all summer.

Q. Did you ever see such a summer since you have been here in the matter of rainfall?

A. Had as much water on our ground.

Q. I mean in the matter of rainfall, so continuously and with so few spells of good weather between?

A. I have seen seasons I couldn't get out grain on account of water and I could do that in 1916.

Q. That is, you had rains in harvest time?

A. Yes, sir.

Q. But for general precipitation through the season?

A. I guess we had a- much as we ever had.

Q. Had plenty?

A. Yes, sir, we got along.

Q. Wasn't your other land wet and soft that season also?

2762 A. Not in the spring.

Q. Was it in the summer?

A. Our land has pockets or swales in it and there the water would be standing but the high land was out.

Q. That water that stood in the pockets swales on your home farm didn't come from the Bois de Sioux river, did it?

A. No, sir.

Q. There was some water on that land in the State of North Dakota that did not—in 1916, that did not come from the Bois de Sioux river, wasn't there?

A. Oh, yes; we got rain.

Q. About what proportion of an average crop did you raise upon your lands in the year 1916?

A. About half a crop.

Q. In——

A. You speak of an average crop, you don't speak of a bumper crop, do you?

Q. About what part of a bumper crop did you raise?

A. About one third of a crop.

Q. Now, about what part of a good crop did you- neighbors raise away from this river, in 1916?

A. Well, that differs. Some had eight or ten bushels and some less. It was hard to estimate because there was rust in the grain. Where the rust struck the crop was lost and where it didn't strike——

Q. And some had none?

A. That is true, too.

Q. And it wasn't confined to this land along the Bois de Sioux river, the crop failure, altogether?

A. Along the Bois de Sioux there was nothing whatever.

2763 Q. In some other places there was nothing whatever, wasn't there?

A. Oh, there was mostly part of a crop. I don't know of any but had a part of a crop around there.

Q. What part of a crop?

A. From one fourth to one half a crop; take an average of the whole right along there.

Q. To get an average of the whole you would——

A. I wouldn't say on the whole, practically be from a third to a good half crop.

Q. And to get that average you would have to take into consideration some people that didn't have any, wouldn't you, that is, substantially none?

A. I don't know of any that didn't have any.

Q. Do you mean to tell me that in Richland County in the year 1916, there were no crop failures?

A. No, sir; entirely.

Q. Substantiaal failures, there were no crop failures in Richland County except along this Bois de Sioux River in 1916?

A. There were light crops, light crops all over the county or part of it.

Q. What was the matter?

A. Rust.

Q. Was there any water?

A. Oh, yes, there was water too, but then it was, lots of places there was a good crop of straw, we had good straw more than we did this year.

Q. You had less straw this year and more grain, didn't you?

A. I don't know as we had any more grain, I don't know as we had as much.

2764 Q. Wasn't the grain crop through this section in 1917 as good as it was in 1916.

A. Right through here I think it was but not down where I live. That is no more bushels the quality was all right, better.

Q. There was no more bushels?

A. No, sir.

Q. Where you live?

A. Five miles north of here.

Q. There was no better crop in 1917 than there was in 1916?

Mr. Pinkney: We object to that, he has answered it.

A. Certainly not because I am Secretary of the Elevator here and I know just what we get in the elevator. We didn't get but half this year that we got last.

Mr. Palmer:

Q. You figured the rental value value of this land in section 3 in 1916, at $700 and in 1917 at $1,075?

A. On account of the prices.

Q. That is on account of the prices?

A. Sure.

Q. Prices of what?

A. Wheat or any grain.

Q. You think that would make all that difference in the rent, the prices?

A. How much difference is it, about $300?

Q. Yes.

A. I think it would.

Q. It would if a man raised wheat. Would it if he raised other crops do you think?

A. I would on barley, I believe barley is fifty cents a bushel more than it was a year ago.

2765 Q. Now, do I understand you to say, Senator Nelson, that through 1917, there was water standing upon this land in section 3?

A. In 1917?

Q. Yes, sir.

A. No, sir, not in 1917.

Q. Was there any water on it in the spring of 1917?

A. No, sir.

Q. It has been dry then through the entire season?

A. Fairly dry, yes, sir.

Q. Do you mean to say that it has been dry through the entire season and has produced absolutely nothing?

A. It was in such shape with rushes and stuff flooded in on it, I didn't figure it as worth plowing.

Q. You just let it lay there and didn't put it in?

A. Yes, sir, it wasn't in shape for a crop without summer fallowing.

Q. Did you summer fallow it?

A. No, sir, we did not.

Q. Have you rented it for another year?

Mr. Pinkney: I understand the witness owned this land.

A. No, sir.

Mr. Palmer: You just rent it?

A. Yes, sir.

Q. Have you got it rented for 1918?

A. I have the privilege of it.

Q. Have you made any bargain for it or contract for it?

A. No, I have not.

Q. You had the privilege to leave it alone in 1917, if you wanted to, didn't you?

2766 A. I could have thrown it up if I wanted to.

Q. You did throw it up?

A. No, sir, I did not.

Q. Did you put that land in in 1917?

A. I cut the hay on it, what I plowed I seeded a little in there.

Q. How much hay did you cut?

A. Forty acres, I think.

Q. What else did you have on this two hundred acres?

A. I had nothing.

Q. Just 40 acres of hay?

A. Yes, sir.

Mr. Pinkney: The 40 acres wasn't on the 200?

A. It wasn't on the 200, on the upper side.

Mr. Palmer:

Q. It was on the upper side of this land in section 3?

A. Yes, sir, the highest ground.

Q. Did you cut some hay on it in 1916?
A. No, sir.
Q. Nothing of any kind, not even pasture?
A. I think what I seeded to say seeded down to clover and timothy in the spring, and I think we cut it over in the fall to get the weeds off.
Q. 1916?
A. Yes, sir, in the fall.
Q. Have you stacked what you cut?
A. Hauled it up, I guess.
Q. Hauled it up to the house?
A. Yes, sir, just to get the weeds out, I haven't clean hay.
2767 Q. Senator Nelson, before you took that land ten years ago, had it been rented to anybody?
A. Yes, sir, it had been rented for years.
Q. To whom?
A. Mr. Louis Bergquist worked it, I don't know how many years. The owner worked it until he sold it for a number of years.
Q. When did the owner sell it?
A. He was an old man, sold it perhaps 20 years ago, I couldn't state the time.
Q. And since that it has been in the hands of tenants?
A. Yes, sir.
Q. Any buildings on it?
A. Yes, sir, small buildings.
Q. Where?
A. Oh, down there near the river.
Q. What is is used for, the buildings?
A. Nothing.
Q. Not used for anything?
A. I put oats in the house sometimes when we can't take care of it in threshing time and other grain.
Q. Just one small building?
A. One building but there is some stable there, sheds.
Q. Just for temporary use to put horses in?
A. Yes, sir.
Q. Is there any grove there?
A. Not on that place.
Q. Any orchard?
A. Nothing.
Q. Any fences?
A. No, sir.
2768 Q. Where does the owner live?
A. Peoria, Illinois.
Q. What is the owner's name?
A. Bibo.
Q. How long has he owned this land?
A. Well, I couldn't just tell because we worked it before we bought it, must be seven or eight years.
Q. About 1910 he bought it?
A. That I don't remember.

Q. What did he pay for it, do you know?
A. Paid $60 an acre, what he told me.
Q. Was he trying to sell it to you when he told you?
A. No, sir.
Q. You didn't want it, did you?
A. I didn't have money enough to buy it.
Q. Is it on the market now?
A. I don't know; he has asked me to continue to work it.
Q. Have you got and claim for damages in here, Senator?
A. I look to the state for damages.
Q. What state?
A. State of North Dakota.
Q. Have you made a contribution towards the expense of instituting and carrying on of this suit?
A. I have not, not a cent.

Redirect examination.

By Mr. Bronson:

Q. You have mentioned, Senator, prior to 1916, the three different occasions of high water conditions that were exceptional in their nature, 1881, *188* and 1897?
2769 A. Yes, sir.
Q. And each of these, in accordance with your testimony, occurred in the spring of the year?
A. Yes, sir.
Q. At the time of the spring break-up?
A. Yes, sir.
Q. And these flood conditions were after such break-up temporary in their character and went off in a short time?
A. Yes, sir, like any ordinary season.
Q. And nothing in all of the years you have lived here prevented you in any way working those lands up in that vicinity?
A. No, sir, never.
Q. You never saw before an occasion where the lands were unable to be worked like the season of 1916?
A. No, sir, never.

2770 SOLOMON E. OSCARSON, being duly sworn in behalf of the complainant, testified as follows.

Examined by Mr. Bronson:

Q. State your age, residence and business?
A. 43 years old, live at White Rock, South Dakota, and I am in the mercantile business.
Q. How long have you lived at White Rock, South Dakota?
A. 27 years.
Q. Continuously?
A. Yes, sir, with the exception of about 3 months.

Q. Have you in your period of residence had occasion to become familiar with the lands of Richland county?

A. I have.

Q. And lands generally speaking in the State of North Dakota?

A. Yes, sir.

Q. And have you during that period become familiar with the value and fertility of the soil for agricultural purposes of lands in Richland county and particularly in Fairmount township?

A. I have.

Q. You have traveled considerably, have you not, over the State of North Dakota?

A. Yes, sir, I have.

Q. You may state whether or not you are familiar by reason of your travels with the lands that are termed Red river valley lands from White Rock, South Dakota, or rather the state line of North Dakota on the south to the line of North Dakota on the north?

A. I am.

Q. You may state whether or not these lands adjacent to
2771 the Red river of the North and the Bois de Sioux river on the west from the state line of North Dakota on the south to the state line of North Dakota on the north are commonly and customarily known and have been so for years as Red river valley lands?

A. Yes, sir.

Q. You may state the general character of these lands of the Red river valley, which you just mentioned in your testimony, from the state line on the south of North Dakota to the state line on the north.

Mr. Palmer: That is objected to as entirely immaterial and too indefinite, witness not shown himself competent to testify.

A. They are nice level land, good soil.

Mr. Bronson:

Q. How would you describe the soil?

A. Black loam soil.

Q. Suitable for agricultural purposes?

A. They are.

Q. And for raising crops of wheat?

A. Yes, sir.

Q. All kinds of cereals?

A. All kinds of small grains, corn.

Q. Generally speaking, do these lands so situated in this Red river valley consist of level prairie lands sloping gradually towards the water course on the east that I have mentioned?

A. Yes, sir.

Q. You may state how these lands in the county of Richland within the so-termed description of Red river valley lands compare with other lands in the Red river valley to the north in North Dakota as to fertility, as to character of soil, as to productivity and as to value?

2772 A. Why, I consider them fully equal to any land further north with the exception there are some scattered pieces in the lower end of the valley that are stony. Of course, these pieces they would not be considered as good. I haven't seen any stones further north. With that exception I consider them fully equal.

Q. Do I understand you correctly that these Red river valley lands in the county of Richland are fully as valuable covering the purposes I have stated as any lands situated in the so-termed Red river valley?

A. I should judge them so.

Q. And does that statement you have made apply likewise particularly to lands situated in the township of Fairmount within such described lands and so-termed Red river valley lands?

A. Yes, sir.

Q. You are quite familiar by reason of your long residence on the line of the State of North Dakota with land values in Richland county and Fairmount township, and, generally speaking, the State of North Dakota?

A. Yes, sir, I am.

Q. You may state whether or not, there has been for 15 or 20 years last past a general increase in values of lands situated in the State of North Dakota?

A. There has.

Q. And will you that general increase?

A. Oh, I should judge two to five dollars an acre every year.

Mr. Palmer:

Q. For how long?

A. The last 15 years:

Mr. Bronson: You have had occasion to buy and sell some lands situated in Fairmount Township, North Dakota, within the
2773 last 12 or 20 years, have you not?

A. Yes, sir, I have.

Q. You may state by referring to descriptions of some of the lands with which you have been directly concerned in a business way situated in this so-termed flooded district in the years 1915 and 1916 governing these years I have mentioned in my previous question.

A. Well, I have owned this farm known as the L. D. Butz farm, the southwest quarter of the northwest quarter and lots 3 and 4 Section 27, Township 129, Range 47, and the west half of the southwest quarter of 27 east half of the southeast quarter of 28, 129, 47 and the northeast of 28. I have been interested in the east half of 21 and the southwest of 33 and the east half of the southeast quarter of 32 at one time I had the west half of the northwest of 34.

Q. These are lands situated between a line drawn east and west through Blackmer station and south to the state line?

A. Yes, sir.

Q. All included in this flooded area in the year 1915, and 1916?
A. Yes, sir.
Q. You know whether or not any of those lands were ever farm, cultivated?
A. Yes, sir, they have all been farmed.
Q. Was there ever a condition existing prior to the year 1915 and 1916 similar to the flood conditions you did have those years during the time you have resided there?
A. No, sir, conditions haven't been as bad except one year.
Q. What year was that?
A. 1897.
2774 Q. State the character and extent of the flood in the year 1897.
A. We had a high flood that year but it didn't last long, just two or three weeks, I should judge.
Q. What were the conditions that produced the flood apparently?
A. We had a heavy snow that winter and it went off quick.
Q. And the breakup came suddenly?
A. Yes, sir, came with a rain.
Q. And the snows went and you had high water conditions?
A. Yes, sir.
Q. How long did they last?
A. I don't think it was very high excepting about two or three weeks, as I remember it.
Q. And these lands were capable of cultivation that year?
A. Yes, sir.
Q. And were they?
A. Yes, sir, they were farmed.
Q. And in the year 1915 were they flooded?
A. Yes, sir.
Q. Crops on them to some extent destroyed?
A. I believe there was some spots of grain on that year but there wasn't very much.
Q. You observed the flood in the spring of 1915?
A. Yes, sir.
Q. Observed the flood in 1916?
A. Yes, sir.
Q. You were living at White Rock at the time?
A. Yes, sir.
2775 Q. You were at White Rock when the flood of 1897 occurred?
A. Yes, sir.
Q. How was the flood of 1897 at White Rock?
A. There was high water there.
Q. Temporary as applied to the lands you mentioned?
A. Yes, sir.
Q. How was it in 1916?
A. It was high, high water.
Q. How long did it last?
A. Why probably all summer.

Q. To what extent was the town covered with water or portions of it inundated?

A. A portion of it was under water.

Q. Just described briefly the conditions, what the conditions were in 1916 in the town of White Rock.

A. At least half of the streets of the town were under water.

Q. And were some of the lots in White Rock covered with water?

A. Yes, sir.

Q. How deep was it in some places?

A. It was deep enough so it was running in the gutters there probably a foot a good many places.

Q. That continued, you say,——

A. Until late in the summer.

Q. Where did these waters come from?

A. From Lake Traverse.

Q. Kept going on northward?

A. Flowed north.

2776 Q. How did they do down towards the fall, how did they recede, if at all, towards the fall of 1916?

A. It gradually lowered towards fall.

Q. And how were the conditions in the spring of 1917?

A. First when the snow went off we had temporary high water for about a week or ten days, after that the water went down for pos-ibly a period of ten days, when it came up again and stayed up for quite a while.

Q. Where did those waters come from?

A. From Lake Traverse.

Q. And you had floods there in 1915 at White Rock?

A. Yes.

Q. Not to as great an extent as in 1916?

A. No, sir.

Q. Where did those waters come from?

A. From Lake Traverse.

Q. Were some portions of the town inundated in 1915?

A. Yes.

Q. To what extent would you say?

A. Oh, probably one-fourth of them.

Q. To what extent in the fall of 1914 did they start coming up?

A. I don't remember now whether it came up in the fall or not.

Q. Didn't have any flood in White Rock in the fall of 1914?

A. No, sir, not that I can remember.

Q. Mr. Oscarson, do you own some lands in the township of Monson, Traverse County, Minnesota?

A. Yes, sir.

2777 Q. What is the description of those lands?

A. It is the fractional northwest quarter of Section 1 and southeast quarter of, and the south half of the northeast quarter of section- 2, 128, 46.

Q. Are those all the lands you own in that township now?

A. No, sir, I own some more.

Q. Where situated?

A. West half of 13.

Q. You own some lands in Monson township known as the west half of Section 13?

A. Yes, sir and the north half of the southeast quarter.

Q. Have you ever owned any other land in that district up near Section 1 in Monson township?

A. Yes, sir, I have.

Q. In Monson or Redpath?

A. In Monson. I owned at one time the northeast of 11 and I owned in East Monson township—I owned the south half of 11 at one time.

Q. About when?

A. In 1898.

Q. When did you acquire these lands up in Section 1 and 2 of Monson township?

A. The land in Section 1 I bought in 1897 and the land in Section 2 in 1916.

Q. How long did you have the land in Section 11?

A. Just two or three months, that is, both these, I, didn't own either one of them there long.

Q. Mr. Oscarson, you may state whether you appeared before a legislative committee of the State of Minnesota in about the
2778 year 1909 along with some farmers from Traverse county concerning a hearing had by such committee then held at the state capitol concerning a petition of the citizens of Traverse county and others relative to flood conditions existing in Traverse county?

A. I did.

Q. And whether or not you gave testimony there and heard others give testimony there?

A. Yes, sir.

Q. And you know Mr. William Ringdahl?

A. I do.

Q. Was he there?

A. As I remember it, he was.

Q. And Mr. David Neuman?

A. Yes, sir, he was.

Q. And Mr. Carl Krenz?

A. Yes, sir, he was.

Q. And Mr. C. E. Ringstrom?

A. Yes, sir.

Q. And Thomas Heggen?

A. Yes, sir.

Q. And A. C. Palmquist?

A. Yes, sir, he was.

Q. And Edward Rustad, now senator?

A. Yes, sir.

Q. And Henry Nueman?

A. Yes, sir.

Q. And Gustav Skogland?

A. I don't remember whether he was there or not.

Q. And Carl Satterbach, of Wheaton?

2779 A. I don't remember him being there but probably he was.

Q. Albert Johnson?

A. I don't remember him either. There was quite a number of them I didn't know, I wouldn't remember.

Q. And were you down there several days?

A. Yes, sir.

Q. Do you remember and recollect at this time that you and some of these other witnesses to whom I have directed your attention before that committee at the state capitol at that hearing stated and gave testimony that in the years of 1897, 1899, 1900, 1903, 1906, 1907 and 1908 the Mustinka state ditch, meaning the first ditch constructed, conveyed into the river, referring to the Mustinka river, large amounts of water, that said river in each of said years, after the crops on the lands had been planted and growing, overflowed its banks and flooded the land and destroyed most of the crops growing thereon?

Mr. Palmer: That is objected to as not the best evidence, as hearsay, incompetent, immaterial and irrelevant, no foundation laid for the proof and the witness has not shown himself competent to testify nor is he competent to testify as to testimony given before this committee and I wish to ask the witness at this time if that testimony was taken down in writing?

The Witness: Some one took it down in writing there.

Mr. Palmer: Objected to as not the best evidence.

The Witness: That was the general run of the testimony.

Cross-examination.

2780 By Mr. Palmer:

Q. Do I understand that you were instrumental in securing the construction of this last section of the Mustinka State Ditch by the State of Minnesota?

A. I was one of the parties over there that petitioned for it. I owned some land out along the river and that was the reason for it.

Q. You did it with the expectation that it might benefit your land?

A. I did.

Q. And you have been instrumental have you not, in having this suit for damages brought by the State of North Dakota and the State of South Dakota against the State of Minnesota for the construction of that ditch?

A. No, sir, I don't claim credit for that.

Q. Have you contributed towards the expense of instituting and maintaining this action?

A. No, sir.

Q. Where is the Red River of the North, Mr. Oscarson?

A. It is generally known as running from Wahpeton, a point

between Wahpeton and Breckinridge up to its Canadian boundary and clear up to Hudson Bay but it is generally considered that the Red River valley extends down as far as Traverse Lake, in general terms it is always considered that.

Q. Whom did you ever hear call these lands in the Bois de Sioux valley from Traverse Lake up to Wahpeton Red River valley lands?

A. Why, I think they are generally referred to as such.

Q. Tell me one person that ever called them that except Mr. Bronson?

2781 A. I have seen early maps that showed the Red river as starting at Traverse Lake but later maps haven't done that. They changed the name to the Bois de Sioux.

Q. Hasn't it always, as long as you have known it, been called the Bois de Sioux river?

A. Yes, sir, it has.

Q. But you call lands in the Bois de Sioux valley Red river valley lands, do you?

A. Yes, I do.

Q. Why?

A. Because it is generally known as such from Lake Traverse, north.

Q. Who knows it as such?

A. People living in this section.

Q. Tell me one person that ever called the Bois de Sioux valley the Red river valley?

A. I can't give you the name of any one, no, sir.

Q. Do I understand your testimony to be, Mr. Oscarson, that these lands from the south line of North Dakota northwardly to Fairmount are all as valuable land as they are well, from there further north along the Red river valley?

A. With few exceptions they are, that is, if the water is removed.

Q. Where are those exceptions?

A. Well, there is a few pieces that are stony and some of them have deep draws through them.

Q. Just describe one of those exceptions.

A. Well, sir, in 21, northwest of that section is a low piece.

Q. The northwest quarter of 21, 129, 47?

2782 A. Is quite low.

Q. You say that is quite low?

A. Yes, sir.

Q. Isn't that the quarter on which the station of Blackmer is located?

A. Yes, sir.

Q. Who owns that land now?

A. I don't know who is the present owner. Lynn Stelton was the last person who owned it.

Q. Is it under cultivation?

A. No, sir.

Q. Has it ever been?

A. Yes, sir.

Q. When?

A. Up to a few years ago. I don't know which was the last year it was cultivated.

Q. What was that sold for the last time it was sold?

A. I couldn't tell you.

Q. Is it on the market now?

A. I don't know.

Q. Do you know anything whatever concerning its market value?

A. Well, it wouldn't be very much just now.

Q. Did you know anything about its market value at any time?

A. Oh, yes.

Q. What was it sold for the last time it was sold?

A. I don't know.

Q. What was it sold for the time before that?

A. I don't know what it has ever been sold for.

2783 Q. Do you know of its ever being on the market at any price?

A. Probably I misunderstood your question, I thought you asked what was the——

Q. I am asking you specifically about the northwest quarter of section 21, have you ever heard the price for which it was ever bought or sold?

A. Not that I remember.

Q. What do you know concerning its market value?

A. Well, because the land is low, there is a heavy draw that starts at the northeast corner, there is one that starts and runs straight south and there is one that runs diagonally across it.

Q. It is a very poor piece of land?

A. Well, it is poorer than the general, there isn't a great deal of difference, there is some difference.

Q. Do you know what the market value of that land was at any time?

A. Why, I know what it could have been sold for. There was times that the land was selling up to $25 or $50 an acre.

Q. When?

A. About 10 years ago.

Q. Then years ago that land was worth how much?

A. Possible it could have been sold at that time about $25.00 an acre.

Q. This southwest of 21?

A. Yes, sir.

Q. You don't know anything about what it was ever bought for or sold for in this history?

A. No, sir.

Q. What other pieces?

2784 A. East half of the southeast of 28. There is a piece there that is quite stony. I don't consider that worth as much as those pieces that haven't stones.

Q. Who owns that now?

A. L. D. Butz.

Q. How long has he owned it?

A. I don't remember what year we sold it to him.

Q. Do you remember approximately?
A. Well, about 1905 or 1906.
Q. What did you get for it?
A. We got $25.00, sold it to an agent, he sold it for $28.00.
Q. How long——
A. He had three dollars commission for himself.
Q. How long had you owned it?
A. We had owned it for ten years about.
Q. Whom did you get it from?
A. From F. W. Johnson Company.
Q. Who were they?
A. A corporation.
Q. Where?
A. A Minnesota corporation doing business at White Rock at that time.
Q. What did you pay them for it?
A. We paid $2,000.
Q. For how much?
A. 160 acres.
Q. $12.50 an acre?
A. Yes, sir.
Q. Whom did Johnson Company get it from?
2785 A. He bought it from the party that homesteaded it.
Q. Who was that?
A. Sven Hanson.
Q. When did he homestead it?
A. I don't know.
Q. When did they buy it from him?
A. I couldn't tell you that either.
Q. You don't know how long they had owned it when you bought it?
A. No, sir, I do not.
Q. Do you know what they paid Hanson for it?
A. I was told it was $1,800, but I wouldn't say that for sure.
Q. For the whole quarter?
A. Yes, sir.
Q. When Hanson sold it to the Johnson Company did he move off of it?
A. Yes, sir.
Q. Had it buildings on it?
A. Yes, sir.
Q. Who lived there after Hanson went away?
A. I don't remember who lived there after that?
Q. Anybody ever live there after that?
A. Yes, sir.
Q. Tenants?
A. Yes, sir.
Q. Anybody living on it during the ten years you had it?
A. Yes, sir, we had parties living there.
Q. All the time?
A. No, not all the time.

2786 Q. What part of the time?

A. The last two or three years that I have owned it I believe Mr. Quidding farmed it.

Q. What did *it* farm it to?

A. Small grain.

Q. On what terms?

A. We usually had our land rented out on the half plan, we furnished the seed——

Q. Did you have that rented out on the half plan?

A. I am pretty sure we did.

Q. Did he live in the buildings?

A. No, sir.

Q. Buildings stood empty?

A. Yes, sir.

Q. Buildings empty yet?

A. Yes, sir.

Q. Anybody living in them?

A. Not the buildings on this quarter, they have been moved up further north there.

Q. Why?

A. There is one set of buildings that is on the two farms and the two farms were merged and the one set of buildings moved up to where the other set was so as to make one set of buildings for the farm.

Q. Did Quidding have good crops on there?

A. I don't think they were anything extra.

Q. The land is pretty wet and low?

A. Well, it is low land same as all the rest of the valley land.

Q. It is rocky?

2787 A. Part of it.

Q. Alkali?

A. No, sir.

Q. No alkali on it?

A. No, sir.

Q. Never saw any on it?

A. No, sir.

Q. Never heard of any being on it?

A. No, sir.

Q. Or any part of the Butz land?

A. No, sir, there wasn't any while I owned it. Of course moisture will bring alkali out. There may be now, there wasn't when we owned it.

Q. Never any moisture on there when you owned it?

A. Yes.

Q. There was?

A. One year.

Q. What year?

A. 1907.

Q. Pretty well covered?

A. No, sir, just a part of it.

Q. Have any crops on it?

A. Yes, sir.
Q. Who?
A. I don't know who rented it; it must have been cropped, I am sure about that.
Q. The northeast of 28, what was it?
A. The northeast?
Q. Yes. Did you own that at one time?
A. Yes, sir.
2788 Q. When did you get it?
A. I got that about the month of January, 1900, I think.
Q. What did you pay for it?
A. I didn't get a memorandum of that, I overlooked it, I don't remember, I didn't get that quarter included.
Q. $2,200, was it?
A. It is something like that.
Q. About $15 an acre? How long did you keep it?
A. We kept it about eight years I believe.
Q. Was it farmed during that time?
A. Yes, sir, it was farmed all the time.
Q. By whom?
A. I don't remember who the tenants were because we changed them, you know.
Q. They changed frequently?
A. Well, it is generally the case with tenants, you know.
Q. You kept it eight years?
A. Yes, sir.
Q. What year did you sell it?
A. I believe it is 1908.
Q. What did you get for it?
A. That is included in that Butz sale, we got $25.00 an acre net to us.
Q. Did that land have any buildings on it?
A. No, sir.
Q. Never had?
A. No, sir.
Q. Any fences?
A. No, sir.
2789 Q. Any grove?
A. No, sir.
Q. Any orchards?
A. No, sir.
Q. Just a bare quarter?
A. Yes, sir.
Q. You say you had that—some of it was bought originally as lot 4, section 27?
A. Yes, sir, we owned it.
Q. Did you buy that in connection with the Butz land?
A. Yes sir.
Q. Of the Johnson Company?
A. Yes, sir.
Q. For how much an acre?

A. We bought the southwest quarter of the northwest quarter and lots 3 and 4, that is one 114 acres. We bought that on May 2nd, 1898, for $1,200.

Q. How many acres?

A. 114 acres.

Q. About $10.00 an acre?

A. Yes, sir, just about.

Q. That was in 1908?

A. Yes, sir.

Q. How long did you keep it?

A. About ten years.

Q. Whom did you sell it to?

A. That was sold to Butz also. Mr. Butz later sold that land to Mr. Quidding.

Q. Do you know what he got for it?

A. No, sir.

2790 Q. That land have any buildings on it?

A. Yes, sir; there is a set of buildings on that would be the—it would be the southwest of the northwest of 27.

Q. Are those buildings there yet?

A. Yes, sir.

Q. What is the character of those buildings?

A. It is a good barn and a small house.

Q. Unpainted?

A. Barn is painted, the house is not.

Q. Ever been painted?

A. No, sir.

Q. When was the barn built?

A. I don't know.

Q. Were those the Quidding buildings?

A. No, sir.

Q. You don't know when that house was built there?

A. No, sir, I think it was built at the time that land was——

Q. You think that land in there is as good as the land further north in the Red river valley?

A. Yes, sir.

Q. Just as good?

A. Just as good as anything in the valley if the water is off. With water on them it isn't worth anything.

Q. Are you familiar, Mr. Oscarson, with the west half of the northwest of 34, part of the Lundberg farm?

A. Yes, sir, there is an eight- I sold Lundberg.

Q. When did you get it?

A. In 1898, I believe; I just had it a short time and sold

2791 it to Mr. Lundberg.

Q. What did you pay for it?

A. I paid $1,000 and sold it for $1,200.

Q. For the whole eighty?

A. For the eighty.

Q. Have any building on?

A. No, sir, no improvements of any kind except it was under cultivation.

Q. Now, you say that you at one time were interested in the southwest of 33?

A. Yes, sir.

Q. When did you become interested in that?

A. We bought on March 26, 1906, from C. H. Johnson.

Q. That man known as Herman Johnson?

A. Yes, sir.

Q. What did you pay him for it?

A. $3,800.

Q. How much an acre?

A. I guess about $23.00 an acre.

Q. In 1908?

A. Yes, sir.

Q. That land lay about a mile from White Rock?

A. A little over a mile.

Q. Have good improvements on it?

A. Pretty fair improvements.

Q. Do you think that was the fair market value at that time, $23.00 an acre?

A. It was, I believe, below its market value.

Q. How long had Johnson been there?

A. He must have been there ten or twelve years, at least?

2792 Q. That land is one of the highest pieces in that locality, isn't it?

A. Yes, sir.

Q. It lays above the floods?

A. It does.

Q. And most of the time that Johnson was there he did his trading and his marketing at White Rock by boat, didn't he?

A. No, that is only late years, you know. He never done that while he owned it, that was after he sold it.

Q. Was he living there in 1915 and 1916?

A. No, he hasn't been living there the last three years.

Q. He couldn't very well use a boat during those years he was not there?

A. There was times in the spring when the water would be up for a spell.

Q. What years did he use a boat?

A. I don't know that he ever did, there may have been years.

Q. What years do you think he may have made use of a boat? To do his shopping?

A. It might have been done in 1907, there was high water a short time.

Q. And in 1908?

A. I don't know as he ever did, I couldn't say, I never saw it.

Q. Did Johnson ever have pretty good crops there?

A. He did.

Q. Quite a prosperous man?

2793 A. No, sir, he was not prosperous.

Q. Did you buy his land from him?
A. Yes, sir, I bought it. A. L. Molander and I had a joint interest together.
Q. And you told Mr. Johnson just prior to the time you bought this land that he better sell it and get out of there because he never could make a living there?
A. Not that I remember.
Q. Didn't you ever tell him anything like that?
A. Not that I know of.
Q. You don't recall that?
A. No, sir, I don't think I ever made any such statement.
Q. Nothing to that effect?
A. No, sir.
Q. Or of that purport?
A. No, sir.
Q. Did he make a living there?
A. He made a living there, such as it was.
Q. A rather poor one?
A. It was, he isn't a thrifty farmer.
Q. And the right kind of a farmer to be on this land, wasn't he?
A. No, sir.
Q. Who has been living there since he sold it to you?
A. There is a Mr. Bruin (Burns) living there now.
Q. When did he buy it?
A. I don't remember what year, it must have been along 1913 or *1913*, I couldn't tell for sure.
Q. Those were dry years weren't they?
2794 A. Yes, sir.
Q. What did he pay for it, do you know?
A. No, sir, I do not.
Q. Whom did you sell it to?
A. To E. L. Clark and J. W. Rose.
Q Who were they?
A. Two Chicago parties.
Q. You bought it of Johnson in 1906 and——
A. I am not sure about that year. I believe it was a little later, 1908, I think it was; I am not sure of the year we bought it.
Q. How long did you keep it?
A. We kept it until 1909, we sold it.
Q. You had it about a year?
A. No, we had it longer than that.
Q. Well, how long did you have it?
A. I think we sold it June 19, 1909, at $5,800.
Q. That is how much an acre?
A. 160 acres. We bought it in 1906, I have a memorandum of it, March 26, 1906.
Q. For how much an acre?
A. $3,800.
Q. You paid for it?
A. We paid for it $3,800.
Q. How much did you get for it?

A. $5,800.
Q. To these Chicago parties?
A. Yes, sir.
Q. Did you get cash for it?
A. No, sir we did not. It was partly terms. We got a cash payment and partly terms.
2795 Q. You didn't make a trade for it?
A. No, sir.
Q. What did these parties do with it?
A. Farmed it by tenant.
Q. How long?
A. I don't know how long they owned it, probably two or three years and then sold it to Mr. Bruin who is on it now.
Q. You don't know what he paid for it?
A. No, sir, I don't.
Q. How long has Bruin been on there?
A. I don't know for sure, I think 3 or 4 years.
Q. Did he have a crop in 1915 and 1916?
A. I wasn't up there at that time, a kind of an out of the way place, you know.
Q. It is a kind of an out of the way place?
A. There is no good road leading up there, a person wouldn't go with an automobile, that is the only way I had of getting around.
Q. What is the matter with the roads in that district?
A. The water gradually raising destroyed the roads.
Q. Were there ever any good roads there?
A. Yes, sir.
Q. Good roads to town while Johnson lived there?
A. There was a good road into town, the nearest road wasn't good.
Q. What was the matter with it?
A. It wasn't graded up.
Q. It didn't need any grade on dry land, did it?
A. Yes, sir, it does.
2796 Q. What character of buildings did Johnson have on there?
A. There was an average farm house, good large barn, good granary, machine shed, nice grove, orchard and it is practically all fenced, a good part of it is fenced.
Q. That is counted as about the best quarter on the flat there, isn't it?
A. Well, the soil is no different than the rest of it.
Q. I know, but respecting water conditions.
A. It is better because the water hasn't got up to it.
Q. And the land over in 32, you say you had an eighty over there?
A. Yes, sir.
Q. East half of the southeast quarter?
A. Yes, sir, east half of the southeast quarter.
Q. When did you get that?

A. We got that a long time ago; it must have been about 1898.
Q. Whom did you get it of?
A. I believe we got it from the party that homesteaded it, Lyman Gibson.
Q. How long had he been on there?
A. Why, he had been long enough to acquire title to it.
Q. Just long enough to secure the title?
A. Yes, sir.
Q. Did he have any buildings there?
A. Yes, sir.
Q. Good buildings?
A. No, they were rather poor.

Q. What did you pay for the land in 1898?
2797 A. I don't remember, if my recollection is right it was about $800 we paid him for it.
Q. For the eighty?
A. Yes, sir.
Q. How long did you keep it?
A. We had that 7 or 8 years, I guess.
Q. Whom did you sell it to?
A. I traded it to a party named Larson for 160 (one hundred sixty) acres up in Morton County, North Dakota. Later I sold that land for $25.00 an acre so I got $50.00 an acre for this eighty.
Q. By trading it off?
A. Yes, sir.
Q. Where did this Larson live?
A. He is dead now.
Q. Where did he live when you made this trade with him?
A. He lived up in Oliver county, North Dakota for — while and later he lived at Detroit, Minnesota, and later at Wheaton, Minnesota, and then at White Rock.
Q. Did he live in the vicinity of this land when you made this trade with him?
A. Yes, sir, he lived——
Q. Lived where?
A. Lived at White Rock at the time?
Q. Did he move onto the land?
A. No, sir.
Q. Did he ever live on it?
A. No, sir.

Q. After you got it from this homesteader, as you say, did
2798 any owner ever live on it?
A. No, sir.
Q. Has there ever any owner lived on it since?
A. I don't know whether there has any owner lived on it since I sold it or not. I don't think so, not that I know.
Q. And there didn't any owner live on it while you owned it?
A. No, sir.
Q. Ever since it was left by the original homesteader, nearly 20 years ago it has been simply a tenant farm?
A. It has.

Q. That land is crossed by one of the outlets of Traverse Lake, isn't it?

A. Yes, sir.

Q. And when Lake Traverse is high the water comes up through those several outlets?

A. It does.

Q. There are three distinct outlets of Lake Traverse, aside from the Bois de Sioux river, up across that flat, isn't there, Mr. Isaakson?

A. Yes, sir.

Q. And when ever the water is high the waters runs to the north through those outlets as well as through the Bois de Sioux river?

A. Yes, sir.

Q. And that is what is the matter?

A. There is a small well defined channel across this land the water don't spread out on this eighty very much.

Q. I say that it what seems to be the trouble there, that
2799 there are four outlets, the Bois de Sioux river, one at White Rock or right close by, one a little further west and one still further west on the west side. The difficulty seems to be when the water rises in the lake it goes through all four of those outlets and in so doing it spreads out?

A. Well, there is a number of outlets, I think there is more than four outlets, there is quite a number of them, of course, when the water gets up to a certain height.

Q. It is an outlet for Lake Traverse, that whole territory?

A. When the water goes high it spreads out and flows to the north.

Q. It comes pretty near being Lake Traverse instead of the Red river?

A. It looked that way a couple of years.

Q. It looked that way in 1897?

A. It did for a short time, the water didn't stay up very long.

Q. How long in 1897, how long did Johnson in Section 33 do his marketing and shopping in a boat, wasn't it substantially all summer?

A. I don't think so. Of course, the water might been lower and still they wouldn't have a chance to get into town because there wasn't any grade at the time. There has since been a high grade built so as to have access to — from that place.

Q. You don't own any of this land in this Bois de Sioux valley at this time, do you Mr. Oscarson?

A. No, sir.

Q. And you didn't own any in 1915 and 1916?

A. No, sir.

Q. Your land is over in Minnesota where the good land it?
2800 A. I guess so.

Q. What did you say about the southeast quarter of 21, did you ever own that?

Q. Well, a corporation that I was interested in, this F. W. Johnson company owned it at one time and I had charge of it. In fact, I was interested a little in the corporation at the time.

Q. Who homesteaded that, do you know?
A. A fellow named Jens Jensen.
Q. How long did he stay there?
A. He stayed there until he was sent to jail, that is about 6 or 7 years.
Q. When did Jens homestead it?
A. It must have been along about 1890, I should judge. I don't know what year but I think that is about the time.
Q. Whom did he sell it to?
A. He made several deals there. He sold it at one time to J. E. Blackmer and I think the sale went back and I believe it landed in the hands of the F. W. Johnson company.
Q. They were a corporation?
A. Yes, sir.
Q. Do you know when it landed in their hands?
A. When the land went into their hands?
Q. Yes, sir.
A. No, sir. I should judge 1895 or along there some time.
Q. What did they pay for it?
A. I don't know.
Q. Did they buy it or trade for it?
A. They bought it.
2801 Q. Did they buy it from Jensen?
A. I think they did. It is possible the deal was closed by Mr. Blackmer, though, they got title from him. Mr. Blackmer never lived on it.
Q. $2,000 for the quarter?
A. Something like that. I sold it afterwards and I had charge of the co-peration.
Q. You sold it and the F. W. Johnson company bought it, paying $2,000 for it?
A. I believe they paid more for it.
Q. The consideration in the deed appears to be $2,000.
A. Is that so?
Q. How long did Jensen company keep it?
A. I sold that land to Otto Anderson in the spring of 1909, I believe it was, for $3,200.
Q. Johnson & Company sold it to you, S. E. Oscarson and Company in 1901?
A. No, sir I don't think so.
Q. For $2,350?
A. I don't remember that end of it. I believe Anderson had bought it before. Anderson, I believe bought it from F. W. Johnson Company.
Q. Didn't S. E. Oscarson & Company own it?
A. Not that I remember.
Q. Didn't S. E. Oscarson & Company sell it to Otto Anderson in 1901 for $2,350?
A. That may be the time that the deed was given but the contract must have issued some time before.
Q. That was $2,350?

A. I tell you how I believe it came about. I had charge of both corporations, both F. W. Johnson and S. E. Oscarson
2802 Company and F. W. Johnson died and he was manager of that corporation and he turned over the affairs to me to liquidate and we may have assumed an assignment of that Anderson contract and given a deed from us. I believe that is how it happened I am sure we never owned it.

Q. How much is your recollection you got from Anderson for it?

A. My recollection was it was $3,200.

Q. The consideration in the deed is $2,350, how does that come about?

A. I couldn't tell you that.

Q. Do you think that his deed is wrong?

A. I don't know; no I don't suppose it is.

Q. You took a mortgage back on it, did you, from Otto Anderson?

A. No, I don't think we took any mortgage back.

Q. How long did Otto Anderson stay there?

A. He was there several years.

Q. Did he get along pretty well, have good crops?

A. He got along pretty well for a few years.

Q. He got the land about 1900 and he was there 1900, 1901 and 1902 and got along pretty well. What kind of buildings were there on this land in 21?

A. Pretty good set of buildings, a fair set of buildings.

Q. House?

A. Yes, sir.

Q. Any paint on it?

A. Yes, sir.

2803 Q. When?

A. I don't know when it was painted.

Q. Barn?

A. Yes, sir.

Q. Paint on that?

A. Stone barn.

Q. Where did he get the stone?

A. There is stone down there at places.

Q. Very poor buildings, are they not?

A. No, they are not.

Q. They are good buildings today?

A. They are fair farm buildings, about like the average run of them.

Q. How long since anybody lived in those buildings?

A. Been occupied right along, a party living there now.

Q. In these Otto Anderson buildings?

A. Yes, sir.

Q. Been living there this summer?

A. I don't know how long, whether he lived there this summer or not. There is a party living there now. I drove by there the other day and I saw a party living there.

Q. Are they plowing up the land?

A. Yes, sir.

Q. Getting it ready for cultivation?
A. I suppose so.
Q. Anderson had a mortgage foreclosed on it in 1911, didn't he?
A. Yes, sir.
Q. Then he deeded the land to you again?
A. I don't remember whether he deeded to me or the Rob-
2804 erts land Company.
Q. It appears to have been deeded to the S. E. Oscarson Company in 1911 at $4,800, $30.00 an acre. How long did the S. E. Oscarson company keep it?
A. We did not, it was bought for the Roberts land Company.
Q. $30.00 an acre?
A. I don't know, Mr. Clark handled that deal. I didn't really have charge of it, I don't remember what he paid for it.
Q. Who owns it now?
A. A fellow named J. A. Westerman.
Q. Where does he live?
A. Capron, Illinois.
Q. Do you know how long he has had it?
A. He has had it about 3 or 4 years.
Q. Do you know what he paid for it?
A. He bought it at $50.00 an acre.
Q. Cash?
A. No, there — some trade, I believe. There was $2,500 trade in it.
Q. He got it about what year?
A. In 1913, I believe it was.
Q. In the spring of 1913?
A. Yes, sir.
Q. Northeast quarter of 21, you say you had at one time?
A. The Roberts land company owned it and I was interested in that corporation.
Q. Is that what they call the Juleen land?
2805 A. Yes, sir, he homestead- it.
Q. Homestead- it somewhere along 1890?
A. About that time.
Q. Those were dry years?
A. Yes, sir.
Q. Now, how long did Ole keep it?
A. I don't remember what year he sold it. He sold it to Mr. Wheeler, I don't remember what year it was.
Q. About 10 years later?
A. It was all of that, I guess.
Q. Did he have good buildings on it?
A. No, sir, the buildings weren't very good.
Q. And he sold it to Mr. Wheeler?
A. Yes, sir.
Q. Do you remember what he got for it?
A. No, I don't.
Q. $2,800 for the quarter?
A. It is about that.

Q. I know I tried to buy it and Mr. Wheeler topped me a little so he got it.
Q. What did you offer on it?
A. About $2,500 as I remember it.
Q. You considered that is all it was worth?
A. No, I thought it was worth more.
Q. Do you think it was worth what Wheeler paid for it?
A. Yes, sir, it was.
Q. Did Juleen live on it after he sold it?
A. I believe he lived there one season after he sold it.
Q. Did any owner ever live on it after that?
2806 A. No, sir.
Q. Always a tenant farm?
A. Yes, sir.
Q. Now you say that Wheeler sold it to the Roberts land Company?
A. Yes, sir.
Q. What did he get for it?
A. I don't know for sure, I believe it was $4,800.
Q. That would be $30.00 an acre?
A. Yes, sir.
Q. That was in 1914?
A. Yes.
Q. You think that was the fair market value of it in 1914?
A. Well, we expect it is worth a little more.
Q. How long did you keep it?
A. We didn't hold it very long.
Q. Why not?
A. Had a chance to sell it at a profit.
Q. What did you get for it?
A. $50.00, as I remember it, an acre.
Q. To whom?
A. J. A. Westerman.
Q. Did you get cash or was that a trade?
A. I am not certain on that quarter, whether there was a trade in that or not.
Q. Consideration appears to be $1,500 from the Roberts land company to James A. Westerman. Do you remember about that?
A. I don't think there is any trade in that deal.
Q. Did you sell that in 1914 to Mr. Westerman?
2807 A. I think it was in 1913, as I remember it. It was in the fall of 1913.
Q. You think you got $50.00 an acre for that land?
A. Yes, sir.
Q. Was that the consideration in the deed?
A. Yes, sir, $50.00 an acre, $8,000 for the quarter.
Q. In cash?
A. Not in cash but payment down, you know, and balance terms.
Q. Did Westerman see the land before he bought it?
A. Yes, sir, he had owned the quarter south of it before he bought that.
Q. Is it on the market now?

A. I suppose it is. I suppose he would be glad to sell it.
Q. What gives you that impression?
A. Because that country has been going back of late years on account of the high water, you can't farm it with the chances of having it flooded.
Q. There has always been some chances?
A. There has been some chances but not like the last two or three years.
Q. There hasn't been as much rains as the last two or three years?
A. I believe the rain fall in 1916 was heavier than we had last year, it was less in 1917.
Q. There hasn't been any water on this land in 1917?
A. I haven't been up there, I haven't been up there since the early part of the season.
Q. Do you know anything about whether Mr. Westerman has it on the market?
A. No, sir.
2808 Q. Nor what he holds it for?
A. No, sir.
Q. Nor any of the other lands, you don't know whether they are on the market or not?
A. No, sir.
Q. And you don't know at what prices they are on the market?
A. No, sir.
Q. And so far as you have any knowledge of their market values, Mr. Oscarson, they are worth as much market value as they ever were, are they not?
A. You couldn't sell them.
Q. How do you know, have you tried to sell them or any of them?
A. I know a lot of them that have tried to sell their lands there.
Q. Who?
A. I know this Mr. Jones that bought this land from Mr. Quidding has been trying to sell.
Q. That is the land down in the river?
A. Used to be the best piece of land in the valley.
Q. When?
A. When Mr. Quidding had it.
Q. What did Quidding get for it?
A. I couldn't tell you now. It is a long time ago he got it from the original party.
Q. Quidding did?
A. C. P. Fundeen, the party who homesteaded it.
Q. He sold the land for $15.00 an acre?
A. It wasn't very high at that time but he raised good crops on it and he had considerable money.
2809 Q. This was the best piece of land in the valley and Fundeen sold it to Quidding for $15.00 an acre some 10 or 12 years ago?
A. I don't know, it is more than that.
Q. When did Quidding go on there?
A. I don't know what year it was, it is quite a while ago.

Q. You say that Jones had that land on the market?
A. Yes.
Q. Has he offered it to you?
A. No, sir, but Mr. Clark, the land man, has been telling me he has it, trying to sell it.
Q. Do you know what price he has got it on the market for?
A. No, sir, I wasn't interested in the price and I didn't ask him.
Q. If you don't know at what price it is on the market, any of this land, Mr. Oscarson, I want to ask you again how you know anything about its market value?
A. Well, I know it can't be sold. There is no buyers for that land. There is nobody that will go in there and buy this land under present conditions.
Q. Have you tried to sell any?
A. No, sir.
Q. Do you know anybody that has?
A. Yes, sir.
Q. At how much an acre?
A. I couldn't say.
Q. Suppose they asked $250 an acre they wouldn't sell it?
A. No, sir, I don't think they would sell it for $10.00.
2810 Q. Do you know anybody that has put it on the market at $10.00?
A. No, sir.
Q. Or $20.00?
A. No, sir. I haven't been interested enough to ask for *for* prices. I wouldn't buy it at any. I sold the last I had at $15.00 an acre and quit.
Q. And got out?
A. And got out.

Redirect examination.

By Mr. Bronson:

Q. You do know that lands that have been flooded in the years 1915 and 1916 as these lands were flooded could not raise crops on them?
A. Certainly.
Q. And you do know lands on which by reason of flood conditions, crops could not be raised have no market value?
A. Yes, sir.
Q. You know that by reason of your long residence here?
A. Yes, sir.
Q. Counsel has referred to general conditions covering lands in this district and in one of your answers you spoke of these lands being all right with the waters off of them. I will ask you whether you referred to the water conditions of 1915 and 1916?
A. I did.
Q. In other words, if the flood conditions of 1915 and 1916 had not occurred these lands would have been as valuable as *as*
2811 they were before?

A. Yes, sir.

Q. And the flood conditions that did occur in the years 1915 and 1916 came from Lake Traverse?

A. They did to a great extent. We had heavier rainfall in 1916 than we had for some time but the principal overflow came from the overflow of Lake Traverse.

Q. Lake Traverse was high?

A. Yes, sir.

Q. And it continued to furnish water apparently right along in 1915 and 1916 through the season?

A. Yes, sir.

Q. You spoke of the J. A. Westerman land; I believe that is the east half of section 21?

A. Yes, sir.

Q. Who farmed that land in 1915?

A. I believe he had a man on there by the name of Collier, Will Collier.

Q. Was it cropped in 1915; was there some crops sown on there?

A. I think there was.

Q. Was it flooded in 1915?

A. I wasn't up there during the season, I don't really know anything about the conditions.

Q. It was flooded in the year 1916?

A. Yes, sir, no question about it.

Q. No crops were raised there that year?

A. No; no, I am sure of that.

Q. Since these flooded conditions have occurred, and you have been up and down this territory, I will ask you to state
2812 whether or not you have noticed the growth of cat-tails and other weeds since the flood has receded?

A. Yes, sir.

Q. You may state therefore what is the effect of these flood conditions upon all of these lands that have been flooded in the flooded territory which we have discussed by these floods of 1915 and 1916 on their market value?

A. It has lowered the market value.

Q. Impaired it?

A. Yes, sir.

Q. And to what extent has it impaired it in your opinion?

A. Why, I don't believe anyone would pay over 26 per cent of what he would three years ago.

Q. That is, with the situation existing on these lands that existed in 1915 and 1916?

A. Yes, sir.

Q. And these flood conditions existing also in the year 1917 as far as the tillability or working of the land was concerned——

A. It did early in the season.

Q. And the conditions which still exist for further flooding of these lands in the even- of rainfall sufficient, your opinion is that it has impaired the value of those lands to the extent you have stated?

A. Yes, sir.

Q. Counsel spoke about some dry years. I will ask you to state whether or not as far as the using, farming and croping of these lands in this ditsriet was effected, whether or not for farming purposes every year was not a dry year until 1915 and 1916?

2813 A. Not any too dry to be suitable for farming; is that your question?

A. Yes. That is, these lands were capable of being farmed during the years you have known them all the time until the flood conditions of 1915 and 1916?

A. Yes, sir, they have been farmed all the time.

Q. I will ask you one further question, Mr. Oscarson, concerning these lands that you own in Monson township. You may state whether or not the construction of that first state ditch,—You know what I mean by that, do you not?

A. Yes, sir.

Q. What flood conditions you noticed it produced on your lands or lands adjacent thereto?

Mr. Palmer: That is objected to as entirely immaterial, not redirect examination and not pertaining to the inquiry in this hearing.

(Question is withdrawn.)

Recross-examination.

By Mr. Palmer:

Q. You consider that you know that those lands will not produce a crop in 1918?

A. That will depend upon the season.

Q. You don't know any more about it, Mr. Oscarson, than I do?

A. No, sir, I don't claim to know.

Q. Now, do I understand you to say that you know that these lands are going to be flooded in the ensuing years?

A. If we have a normal rainfall I believe they will.

2814 Q. If we have sufficient rainfall to flood the lands they will be flooded?

Mr. Bronson: We object to that, that isn't the witness' answer.

Mr. Palmer:

Q. If we have normal rainfall they will be flooded?

A. That is my opinion.

Q. You know that?

A. That is my opinion.

Q. What do you base that knowledge on?

A. In the increase of the height of Lake Traverse, it has been increasing several years, gradually getting higher and spreading on the lands.

Q. And the rainfall has been gradually increasing?

A. Not this year, the lowest in 20 years.

Q. The rainfall gradually increased in 1914 still higher in 1915 and the highest on record in 1916, in this section, isn't that true?

A. It is true as to 1916. I wouldn't call 1914 and 1915 anything above the normal.

Q. You don't know anything about the precipitation of those years, do you?

A. I lived here, I knew all the rains that came.

Q. Do you know anything about the precipitation records in those years?

A. No, sir, I haven't looked it up in inches.

(At this time recess is taken until 9.15 o'clock a. m. November 14, 1917.)

2815 November 14, 1917, at 9 a. m.

BURT KURTZ, being recalled in behalf of complainant, testified as follows.

Examined by Mr. Bronson:

Q. Mr. Kurtz, you have testified before in this proceeding?

A. Yes, sir.

Q. You may give the description of the land that you own in Fairmount township?

A. N. W. of 33, township 130, Range 47.

Q. How long have you owned that?

A. Since the fall of 1895.

Q. Were these lands damaged by reason of flood waters in 1915?

A. Not in 1915, my home quarter was not, didn't get on until after the crop was off, I just barely got the crop off in 1915.

Q. You believe in 1915 you got the crop off the land before the flood waters occurred?

A. Yes, sir.

Q. In 1916 was the land flooded?

A. Forty acres of it was.

Q. And about what season of that year?

A. The whole season of 1916.

Q. Did you have any land in crop in 1916?

A. No, sir.

Q. The 40 acres that were destroyed, you didn't have in crop?

A. No, sir.

2816 Q. Did you have the rest of the farm in crop?

A. Yes, sir.

Q. Have you computed the damage that the flood of 1916 occasioned to this land in 1916?

A. Yes, sir.

Q. Will you state it?

A. I had wheat on that quarter that went nine bushels to the acre, which I sold for $1.60 per bushel; figuring it on that basis it would amount to $576.00. Threshing and cutting expenses was $138.80, leaving net $437.20.

Q. You state, therefore, the value of the crop for 1916, to be $437.20 net?

A. Yes, sir.

Q. That is figured on a crop that would have been produced if those flood conditions had not occurred?

A. Yes, sir.

Q. Have you computed that on this rental basis, the customary crop plan basis?

A. Yes, sir.

Q. You may state what the rental value of these premises was so affected by those flood conditions in the year 1916 for the year 1916, if those flood conditions had not occurred?

A. My rental would have been $298.00 net.

Q. In 1917 how were those premises affected by reason of those flood conditions?

A. It wasn't affected quite so much, I only had 27 acres, I couldn't put in this year.

Q. And did you compute the value of the crop that would have been raised otherwise except for those flood conditions in the year 1917?

2817 A. Yes, sir.

Q. You may state it, please.

A. The wheat on my home quarter averaged 11½ bushels which I sold for $2.45 a bushel, figured on that basis it would be $759.50. Expenses for seed, plowing, threshing, etc., would be $134.10. Leaving $625.40 as net.

Q. Which is the net value of the crop that would have been raised except for those flood conditions on these premises?

A. Yes, sir.

Q. Have you made a computation on the rental basis for the same year?

A. Yes, sir, my share would be $362.70.

Q. Do you mean to say, therefore, that the rental value of these premises for the year 1917 on this crop plan, of the acres affected by those flood conditions in the year 1917, is the sum of $362.70?

A. Yes, sir.

Q. That is not the rental value of all the land?

A. No, sir, just 27 acres.

Q. What is the cost of restoring these lands so flooded as you have described in your evidence, to their former condition?

A. About $5 an acre.

Q. That is the acres affected?

A. Yes, sir, 40 acres.

Q. And which you regard as damage to the land by reason of these flooded conditions?

A. Yes, sir.

Q. That would be how many acres?

2818 A. 40 acres, $200.

Q. In addition to the northwest quarter of 33, were there some other lands in this flooded district in which you had an interest, or which you farmed?

A. Yes, sir.

Q. What are those lands?

A. Northwest quarter of northeast quarter and lots 1, 2, 3 and 4, section 33, township 130, range 47. Lots 3 and 4 in section 4, township 129, range 47. Consisting of 221.53 acres.

Q. Known as the lands of Ole Swivel Estate?

A. Yes, sir.

Q. Did you have those lands rented for the year 1915?

A. Yes, sir.

Q. On the crop plan basis?

A. Yes, sir. It was a little different than the others. I furnished the seed and gave the owner one third in the elevator.

Q. You furnished the seed?

A. Yes, sir.

Q. And the cost of threshing?

A. Yes, sir. I gave the owner one third net in the elevator.

Q. Were these premises flooded in the year 1915?

A. Yes, sir.

Q. And the crop thereon destroyed in the year 1915 by reason of these flood conditions?

A. Yes, sir, everything but the hay.

Q. What crops did you have in?

A. I had 70 acres of oats and 20 acres of corn.

Q. Were these crops, in what condition were these crops at the time of the occurring of these flood conditions in the year 1915?

2819 A. They would have been ready to cut inside of a week, the oats.

Q. In what condition was the corn at the time of the flood condition?

A. If I remember right the corn was just tasseling out.

Q. What sort of a yield was promised?

A. Good yield.

Q. Will you state the value of the crop of oats so destroyed on these premises in the year 1915 at the time they were destroyed?

Mr. Palmer: That is objected to as not being proper measure of damages.

A. The value of these crops, the net value, was $1,575.00 figuring 17 acres of oats at 45 bushels per acre at 50¢ per bushel and two thirds of $1,575.00 would be $1,050.00, and the expenses of harvesting and threshing were $290.00, leaving a net of $760.00.

Q. Take the value of the corn so destroyed on the premises in the year 1915 at the time they were destroyed?

A. 20 acres of corn figured at $7.50 an acre would be $150.00.

Q. What was the total value of those crops so destroyed on these premises in the year 1915 by reason of these flood conditions at the time they were so destroyed.

A. $910.

Q. That was your share?

A. Yes, sir.

Q. Under this crop plan of such crops so destroyed?

A. Yes, sir.

2820 Q. What was the share, under the same computation, of the owners?

A. It would be $525; you want the cash rental of the corn I paid him?

Q. Then the total value of the crop so destroyed in the year 1915 would be $1,435?

A. Yes, sir.

Q. Now, in addition to that, you paid the estate, the owners, how much for the corn?

A. $2 per acre.

Q. That was paid?

A. Yes, sir.

Q. You didn't have these premises in 1916?

A. No, sir.

Q. Have you considered on a rental basis the rental value of these lands for the year 1916?

A. I have not, but I could figure it, at $3 per acre.

Q. That is on a cash rental basis?

A. Yes, sir.

Q. And what would that amount to; how much was flooded in 1916?

A. It was all flooded in 1916. I think there was 154 acres in the quarter, and there was 110 acre- broke.

Q. Not worked in 1916, therefore?

A. No, sir.

Q. No crops planted, or could be planted?

A. No, sir.

Q. It was all flooded?

A. Yes, sir.

2821 Q. All under cultivation and pasture?

A. In that section, and there is 65 acres in section 4.

Q. So altogether there was 221 plus acres?

A. I think it is 221, is right.

Q. And figured on the rental cash basis of $3 per acre, would be three times that?

A. Yes, sir.

Q. Would that apply to the hay land, too?

A. No, sir, I always sold the hay land out for him at $2 per acre.

Q. How much hay land was there?

A. There would be about 111 acres. There wasn't quite that much, because there was about 15 acres in pasture, I had the use of for working the road tax. It would be about 90 acres.

Q. What was the value of the pasture on a cash rental basis?

A. It was worth $2 an acre.

Q. That would figure out, therefore, two an acre for 111 acres?

A. Yes, sir.

Q. Or $222 for the year 1916, on the rental basis?

A. Yes, sir.

Q. And on the 110 acres balance would be $330?

A. Yes, sir.

Q. Or, total rental value figured on the cash basis for 1916, would be $552?

A. Yes, sir.

Q. In 1917, were the premises worked?

A. No, sir.

2822 Q. Still wet?

A. Yes, sir.

Q. Affected by those flood conditions?

A. Yes, sir, I cut one stack of hay on it, it was all full of old growth in it, he didn't consider it worth anything, he said, if I could get anybody to go in any get it; they could have it, and they and Mr. Taylor went in on the 90 acres and cut some.

Q. Will you state that the land was unable to be worked in 1917 by reason of those flood conditions?

A. Yes, sir.

Q. Will you state the rental value to be substantially the same as in 1916, therefore, on the same land?

A. Yes, sir.

Q. You may state whether or not you received instructions or advice from the township board of supervisors of Fairmount township concerning the assessment to be made in the year 1916?

A. Yes, sir.

Q. You may state whether or not you received any notice concerning the action of the board of county commissioners of Richland county.

A. Not direct from them, I did the board of supervisors.

Q. Not directly?

A. Yes, sir.

Q. In your testimony at St. Paul, I think you mentioned that you had no claim for damages, or had set forth no claim. I will ask you to state whether or not that was correct, or referred only to the year 1915?

A. That only referred to the year 1915.

2823 Q. On your own land?

A. Yes, sir. I started to explain it, and he gave me another question right away, and I didn't get a chance to answer it.

Cross-examination.

By Mr. Palmer:

Q. What is your home place?

A. Northwest of 33, Township 130, Range 47.

Q. How much of this land, northwest of 33, do you say now was subjected to overflow in the years 1915 and 1916?

A. In 1915 it didn't overflow until we just barely got the crop off; there was 40 acres of it.

Q. 1916?

A. 40 acres, it wasn't quite 40 in the fall of 1915.

Q. 40 acres were overflowed in 1916, and you stated the damages that you are telling about?

A. Yes, sir.

Q. How long have you known that to be a fact?

A. Quite a while.

Q. Did you know it when you testified under oath at St. Paul?

A. Yes, sir.

Q. Was this question asked you at St. Paul: "Where do you live?" and did you answer, "Live on the northwest quarter of Sec-
2824 tion 33, township 130, Richland County, North Dakota"?

A. Yes, sir.

Q. "How long have you lived there?" and did you answer: A. "About 21 years."

A. Yes, sir.

Q. Was this question asked you: Q. "Now I understand that you have farmed this northwest quarter of 33 from what year?" A. "1896." Did you answer that way?

A. Yes, sir, I think I did.

Q. Was this question asked you: Q. "every year up to 1915? A. Yes, sir." Did you so answer that question?

A. Yes, sir.

Q. Was this question asked you: Q. "Any portion of this land in section 33 been subject to overflow in 1915 and 1916? And did you answer it: A. "Probably 8 or 10 acres, that is a little ravine that goes across the southeast corner, that is all."

A. Yes, sir, that was the only place that the water stood on it, but it was water-soaked so that it couldn't be worked until July of this year.

Q. That was the only place on your home quarter that was subject to overflowing in the years 1915 and 1916, was 8 or 10 acres, a ravine in the southeast quarter?

2825 A. Where the water stood, yes, sir.

Q. In 1916 you say 40 acres of your land were wet?

A. Yes, sir.

Q. So wet that you lost the crop?

A. Yes, sir so wet I couldn't plow.

Q. A great deal of the land in this locality was so wet in 1916 that the crop was a practical failure Mr. Kurtz wasn't it?

A. I think some places it was.

Q. And you don't undertake to say that this land of yours that was wet outside of this 8 or 10 acres was overflowed by water from the Bois de Sioux river?

A. No sir, but I think it was soaked from that because I farmed all the rest of the land.

Q. You don't know anything about where the water, this specific water came from that made this 40 acres wet, do you?

A. Why, I think it came from the river, that is the way it was on the land I worked east of there.

Q. How do you know it came from the river?

A. I couldn't swear to it, of course.

Q. You have just simply put a claim in here for damages on account of loss of crop on wet land on your farm in 1916, thinking

that you could get those damages from the State of Minnesota, haven't you?

A. No, sir.

Q. What have you put these damages in here for?

A. To collect them.

Q. From whom?

A. State of Minnesota.

Q. Through the State of North Dakota?

A. Yes, sir.

2826 Q. And for that purpose you have contributed money toward the expense of instituting and maintaining this suit by North Dakota against the State of Minnesota?

A. Yes, sir.

Q. Now you think it is perfectly fair for you to pick out 30 acres of your land that was simply wet in 1916, and on which you lost the crop and claim damages from the State of Minnesota for it?

A. The greater part of it in the corner was overflowed, and the seep came from the coulie, the little ravine.

Q. What caused the little coulie or ravine, to be there across your southeast corner, was it not the action of the water in running through there?

A. It has always been there, I don't know what caused it.

Q. It must have been caused, Mr. Kurtz, by the action of the water in running through there, cutting out a channel, mustn't it?

A. I suppose so, yes, sir.

Q. And its very presence there would indicate to you that water had run across that part of your land from time immemorial, wouldn't it?

A. There was never a time but what it could be farmed up until 1916?

Q. That ravine could be farmed?

A. Yes, sir.

Q. Did you farm it?

A. Yes, sir.

Q. That coulie?

A. Yes, sir.

2827 Q. What did you farm it to?

A. I plowed it up every year.

Q. Every single year?

A. Yes, sir, up until the time I mentioned.

Q. You recall the year 1897?

A. Yes, sir.

Q. How much of your lands were flooded in 1897?

A. I think it came up to the tree claim in 1897.

Q. How many acres of your land?

A. Well, if I remember right, it was 90 or 100 acres.

Q. In 1897, the water came up and covered about 100 acres?

A. Yes, sir.

Q. Of your land in section 33?

A. Yes, sir.

Q. And in 1916 it covered only 40 acres?
A. No, sir, it didn't cover 40 acres.
Q. Simply 8 or 10 acres in the southeast corner?
A. Yes, sir.
Q. In this ravine or coulie?
A. Yes, sir.
Q. And you say at no time in the whole 25 years that you have lived in that locality have you seen water in that coulie except in 1916?
A. I didn't say that. I said I had farmed it every year.
Q. You farmed it with water in it?
A. The water went off that year so I could farm it.
Q. In 1897?
A. Yes, sir.
2828 Q. How about the year 1908?
A. Farmed it.
Q. In the summer?
A. Farmed it.
Q. 1906 in the summer?
A. Yes, sir.
Q. And 1907?
A. Yes, sir.
Q. Did you see that land in 1881?
A. No, sir.
Q. Or in 1888?
A. No, sir.
Q. 1916 was a year of excessive rainfall?
A. Yes, sir, quite so.
Q. And that rainfall continued right on through the entire season of 1916 with very little good weather between?
A. Yes, sir.
Q. And it was nothing strange that there was water in this little coulie across your land through the season of 1916, was there?
A. Why, it couldn't help but be; there was water all over there.
Q. Everybody lost more or less of their crops in 1916 in this whole surrounding locality, did they not?

Mr. Pinkney: We do not know that he is qualified to talk for everybody; we object to the form of the question.

Mr. Palmer:

Q. They are not all claiming damages from the State of Minnesota?
A. I don't think so.
Q. And you think that you lost the crop in 1917 on this
2829 land on account of the water from the Bois de Sioux river, do you?
A. Yes, sir, it was so wet I couldn't plow it, up to July.
Q. That ravine that runs across the southeast corner of your land is simply an outlet for the water coming up from the southwest isn't it, and not overflow from the Bois de Sioux River?

A. There is no noticeable ravine coming, just a little bit like.
Q. Has it no beginning?
A. I think it hits Gajer's, right on the south a little.
Q. Runs across Mr. Gajer's land?
A. I don't think clear across.
Q. Has it any ending?
A. I think it starts in his field, some place.
Q. Where does it end to the northeast, where does the water go?
A. It goes across the Miske place, down into Mud Lake.
Q. That is a part of the Bois de Sioux river?
A. Yes, sir.
Q. Simply an enlargement of it, isn't it?
A. Yes, sir.
Q. What do you mean by the Miske place?
A. That is the description I gave.
Q. The description you gave in the Swivel land?
A. Yes, sir.
Q. Has this land which you have described as lots 1, 2, 3, and 4 and the northwest of the northeast of section 33 130, 47 and lots 3 and 4 in section 4 — 129, 47, any buildings upon it?
2830 A. In 33 there is buildings.
Q. Do these buildings go with the balance of the farm?
A. Yes, sir.
Q. How many years have you rented that land?
A. Somewhere 6, 7 or 8 years, I couldn't exactly say, 5 or 6 or 7.
Q. Has anyone lived in the buildings during that time?
A. Yes, sir.
Q. Who?
A. The Kuglin boys, lived there a year and a half.
Q. When?
A. Fall of 1914 and summer of 1915, I think it was; I wouldn't be sure as to that. The Swanson boys lived there a year.
Q. What year did they live there?
A. In 1913 or 1914, I wouldn't be sure which it was.
Q. Who lived there before that?
A. There was someone lived there after that I was trying to think of, I can't speak his name now.
Q. Has there been a considerable part of the time since you have been farming the land that the buildings have stood empty?
A. Well, part of the time. One year I had a hired man there. I don't think there was over two years while I farmed it. But what there was somebody in the buildings sometime of the year.
Q. These various tenants did not farm the land, they were simply occupying the buildings?
A. No, sir, they didn't farm that land, they farmed other land.
2831 Q. Those buildings are very near to this enlargement of the Bois de Sioux river which you call Mud Lake are they not?
A. Yes, sir, within a half or three quarters of a mile.
Q. Do you think it is half a mile or three quarters of a mile from the——

A. I would say it was a little over a half a mile.
Q. And the intervening land between the buildings and the river is practically on a level with the river, isn't it?
A. Not all of it, you take what is broke up is quite a little higher and where the pasture comes it slopes.
Q. Is there any cultivated land whatever between these buildings and the edge of the river, or Mud Lake?
A. Oh, yes.
Q. There is?
A. Yes, sir.
Q. How much?
A. Well, there is one hundred acres there that runs the whole mile on that section.
Q. How wide a strip is that?
A. Up to the buildings it is probably 80 or 90 rods wide.
Q. By the buildings?
A. Yes, sir, there is a piece comes east of the buildings.
Q. All of these lots 1, 2, 3 and 4 and the northwest of the northeast of 33 except a very small strip of the westerly side, is what is marked swamp or marsh land on the government plat isn't it?

Mr. Bronson: Objected to upon the ground that it asks for a mere opinion of the witness the exhibit shows for itself.
2832 A. It appear- to be on that Exhibit.

Mr. Palmer:

Q. Isn't it true that the land is very low and wet land?
A. No- all of it, no, sir.
Q. A greater part of it?
A. The meadow part of it, yes, sir.
Q. And has always been so?
A. The meadow, yes, sir.
Q. Now the land in section 4, these two lots, lie right adjacent to the river?
A. Yes, sir, they are right by two big sloughs.
Q. Runs right through them?
A. Yes, sir.
Q. And the two big sloughs that you speak of are simply enlargements of the river?
A. Yes, sir.
Q. So these lands have always been hay lands?
A. Yes, sir.
Q. When they have been used for any purpose?
A. Yes, sir.
Q. And they are low-lying wet lands, ordinarily?
A. Yes, sir.
Q. Where does Mr. Swivel, the owner of those lands live?

Mr. Bronson: Swivel is dead, it is owned by minor children.

Mr. Palmer:

Q. Where did he live at the time of his death?
A. Sacred Heart, Minnesota.
Q. How long had he lived there to your knowledge, ever since you had know- it?
A. Yes, sir.
2833 Q. Ever since you had rented the land?
A. No, I think I rented it before Mr. Swivel acquired them; I think I had it a year or so.
Q. Did Mr. Swivel ever live on any part of this land?
A. No, sir.
Q. Or in the State of North Dakota to your knowledge?
A. No, sir.
Q. And are his heirs, so far as you know, all residents of the state of Minnesota?
A. I don't think they are.
Q. Any of them reside in North Dakota?
A. I think so.
Q. Where?
A. Western part of the state. One of them was here this fall; I have forgotten the name of the place he said he was at.
Q. Do you know when Mr. Swivel died?
A. I think the old gentleman has been dead five or six years, possibly longer.
Q. Do you account to his estate for the rent?
A. No, I account to his son, M. O. Swivel.
Q. Where is he?
A. He is there in Montana or Minnesota, got land in both places, also land in North Dakota.
Q. Do you know about when Swivel acquired this land?
A. If I remember right, it was ten or twelve years ago the old gentleman got it.
Q. That would be about the year 1905 or 1906?
A. Yes, sir.
Q. Do you know what he paid for it?
A. I couldn't say.
2834 Q. Has he ever placed it upon the market?
A. Well, I don't know as you would call it placing it upon the market, I went down trying to buy it at one time.
Q. When was that?
A. 1912 or 1913.
Q. What did you offer him for it?
A. I didn't see the old man at that time, I see the administrator.
Q. You mean, you made the offer to the administrator?
A. Yes, sir.
Q. What did you offer for it?
A. I didn't make an offer, I went down to see what it could be bought for.
Q. Did you get any information?
A. Yes, sir, they wanted $45 an acre.

Q. You didn't want to pay that?

A. Yes, sir, he said it would take quite a while before it could be probated, and at the time I heard from them again the flood conditions were here, a year or so afterwards.

Q. Did you consider that a fair market value of it in 1912?

A. I thought it was cheap.

Q. $45 an acre?

A. Yes, sir.

Q. How long since any owner of the land lived on it?

A. I can't say just how long it was since Mr. Spreckels lived on it.

Q. Could you say about how long ago it was that the last owner lived on it?

A. I couldn't tell very close to it, I don't believe, there was two parties owned it.

2835 Q. It is a good many years isn't it?

A. Oh, it is somewheres ten, twelve or thirteen, such a matter as that, I wouldn't be positive

Q. Was someone renting it before you rented it?

A. Yes, sir.

Q. Did the renter live on the place?

A. Yes, sir.

Q. Who was that?

A. Mr. Tyrell, and a fellow by the name of Kress.

Q. Do you know on what terms they rented it?

A. I do not.

Q. Do you know of its ever being rented for cash rent?

A. Nothing only the hay land and the corn land.

Q. What did the corn land rent for?

A. We got two dollars an acre.

Q. And the hay land the same?

A. Well, parts of the hay land that brought more, where the upland was, and where the slough crosses there we got two dollars.

Q. What was the highest you got for any part of the hay lands?

A. $2.50.

Q. The place where those buildings stand is very low and wet isn't it?

A. It is in the spring of the year, if there is any snow, snow lodges in the trees.

Q. And the buildings themselves are in a very dilapidated and ruinous condition, aren't they?

A. With the exception of the granary, they are pretty well out of repair.

2836 Q. Had he placed any fences on it?

A. Yes, sir.

Q. All fenced?

A. All but about 80 or 90 rods; no, it is 160 rods long and about 80 rods on the south. We took up those fences.

Q. That is between Gajer and yours?

A. No, between Gajer and Swivel's.

Q. Do you mean to say that you offered $45 an acre for all of this land?

A. No, sir.

Q. Which part of it?

A. That in 33.

Q. The whole of it in 33?

A. Yes, sir.

Q. That is land which lies adjacent to yours on the east?

A. Yes, sir, some of it is south, runs a mile long.

Q. You didn't attempt to buy the land down in section 4?

A. No, sir.

Q. This Mud Lake, as it is called, here in the river, is wholly distinct and separate from the Mud lake that has been spoken of forming part of Lake Traverse south of White Rock?

A. I think so.

Q. Has this Mud lake always been more or less of a lake there.

A. I think it has always had water in with the exception of a couple of years. There is springs in it on the east side.

Q. About how wide is the river where it forms this lake?

A. At the present time, you mean?

2837 Q. Well, the lake surface?

A. At the present time?

Q. No, the average size of the lake at ordinary times.

A. I suppose it is—I don't know, it is hard to tell, it is a funny shape.

Q. I should judge from the plat here that it — sixty to eighty rods?

A. Something like that, I should judge.

Q. And about what is the depth of the water at average seasons?

A. From six inches to a foot.

Q. And has the lake, or enlarged river, any well defined banks? At the western side?

A. Not on the south, but on the north it has.

Q. At the south end, there is practically no bank at all, is there?

A. No, sir.

Q. And I take it that as soon as the water rises, it——

A. Backs right up into the sloughs I spoke about in lots 3 and 4.

Q. And spreads out over the land?

A. Yes, sir.

Q. Do you know anything about what the land was sold for the last time it was sold?

A. I do not.

Q. Or when it was sold?

A. No, sir.

Q. You never made any inquiry as to that?

A. No, sir.

2838 Q. And you don't know whether the heirs or the estate of Mr. Swivel have the land on the market at this time?

A. I do not. One of the boys was up here this fall and wanted to sell it to me, I didn't even ask him the price of it.

Q. Do you know who homesteaded this swivel land?
A. I have heard the man's name I never met him.
Q. Do you know how long he stayed there?
A. I don't think he stayed there very long.
Q. Just long enough to prove up?
A. Yes, sir, then he sold it to Mr. Miske, and Mr. Miske owned it for years.
Q. Miske lived there himself?
A. No, sir, he hired people that worked there.
Q. Where did Mr. Miske himself live?
A. Wahpeton, North Dakota.
Q. And then did Miske sell it to Swivel?
A. No, sir, he sold it to Spreckels.
Q. You don't know what he got for it?
A. No, sir, I think it was a land trade at that time.
Q. Spreckels lived there himself, didn't he?
A. Yes, sir.
Q. About how many years?
A. I would say five or six. Possibly longer, I wouldn't say for sure.
Q. Then he sold it to Swivel?
A. No, I think he sold it to O'Connor, Sacred Heart, or Renville, Minnesota.
Q. And Spreckels moved off of it after five or six years?
A. Yes, sir.
Q. And O'Connor did he ever live on it?
2839 A. No, sir, that is when he sent this man Kugler up from Minnesota.
Q. No one ever lived on it after Spreckels?
A. No, sir.

Redirect examination.

By Mr. Bronson:

Q. Counsel spoke to you about the rainfall of 1916 being excessive; you didn't keep any account of the precipitation records?
A. No, sir.
Q. You don't know how it compares with other years or other seasons?
A. Not only as I remember it, that is all.
Q. In other words, you remember it as being excessive by reason of being above the normal?
A. Yes, sir.
Q. And in the year 1916 you saw other farms in this community cropped and seeded, crops growing on them not in the flooded territory?
A. Yes, sir.
Q. And harvested and threshed.
A. Yes, sir.
Q. Are you able to distinguish between lands which are flooded

by flood water and lands that have water upon them by reason of more than the usual rainfall, as to the way it affects the land for farming purposes?

A. Yes, sir.

Q. And your land that you have mentioned here, and which was damaged in the year 1916, are lands that were affected by flood waters?

A. Yes, sir.

2840 Q. That remained upon them more or less during the entire season?

A. Yes, sir.

Q. And have those conditions continued for the year 1917?

A. They wasn't flooded, but they were very wet, so I couldn't plow them.

Q. From these flood waters?

A. Yes, sir.

Q. In other words, in mentioning the acres that were actually overflooded, you have referred to the waters affecting those lands by seepage, etc., so as to render them unfit for cultivation?

A. Yes, sir.